

SHARE PURCHASE AGREEMENT made the 6th day of October, 2008

BETWEEN

THE MUNICIPALITY OF WEST PERTH

-and-

ERTH CORPORATION

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THIS SHARE PURCHASE AGREEMENT is made the 6th day of October, 2008.

BETWEEN:

THE MUNICIPALITY OF WEST PERTH, a municipality located in the Province of Ontario

(hereinafter called the “**Vendor**”)

-and-

ERTH CORPORATION, a corporation incorporated under the laws of the Province of Ontario

(hereinafter called “**Purchaser**”)

WHEREAS:

- A. The Vendor is the registered and beneficial owner of all of the issued and outstanding shares (the “**Company Shares**”) in the capital of West Perth Power Inc. (the “**Company**”)
- B. The Vendor wishes to sell to the Purchaser and the Purchaser wishes to purchase from the Vendor all of the Company Shares and upon the terms and conditions set forth in this Agreement.
- C. As consideration for the Company Shares, the Purchaser agrees to issue to the Vendor a number of Class B shares in the capital of the Purchaser pursuant to the terms and conditions in this Agreement.

NOW THEREFORE that in consideration of the premises and the covenants, agreements, warranties and payments hereinafter set forth, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE 1
DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, unless something in the subject matter or context is inconsistent therewith:

- 1.1.1 “**Agreement**” means this share purchase agreement and any instrument amending this Agreement as referred to in Section 13.7; “hereof”, “hereto”, “hereunder” and similar expressions mean and refer to this Agreement and not to a particular article or section and

the expression "Article" or "Section" followed by a number means and refers to the specified Article or Section of this Agreement.

- 1.1.2 **"Business"** or **"Businesses"** mean the business or businesses currently and previously carried on by the Company or EARTH, as applicable, consisting of,
- (a) In the case of the Company, a licensed distributor of electricity within its licensed service area; and
 - (b) In the case of the Purchaser, a holding company owning shares in and providing oversight and management of:
 - (i) Erie Thames Powerlines, a licensed distributor of electricity within its licensed service area; and
 - (ii) the other Subsidiaries set forth in Schedule 1.1.49, a non-regulated providers of utility services.
- 1.1.3 **"Business Day"** means a day other than a Saturday, Sunday or statutory holiday in the Province of Ontario.
- 1.1.4 **"Claim"** means any act, omission or state of facts, and any Legal Proceeding, assessment, judgment, settlement or compromise relating thereto, which may give rise to a right to indemnification under Sections 12.3 or 12.4.
- 1.1.5 **"Closing"** means the completion of the transactions contemplated herein, including sale by the Vendor to the Purchaser of the Company Shares and the issuance of the Erie Thames Shares to the Vendor.
- 1.1.6 **"Closing Date"** shall mean January 1, 2009 if all the conditions described in Section 8.1 and Section 9.1 have been satisfied or waived by the relevant Party in advance of such date or a date no later than 14 days following the receipt of all Required Regulatory Approvals if the Required Regulatory Approvals are not received before December 19, 2008, or such other date as may be agreed by the Parties.
- 1.1.7 **"Closing Date Financial Statements"** means the financial consolidated statements for the Company and/or the Purchaser, as applicable, for the fiscal period commencing on January 1, 2008 and ending at the end of the day prior to the Closing Date, as finally determined in accordance with Article 4.
- 1.1.8 **"Closing Document"** means any agreement, certificate, instrument, affidavit, statutory declaration or other document delivered or given pursuant to this Agreement at or subsequent to the Closing.
- 1.1.9 **"Company"** means West Perth Power Inc.
- 1.1.10 **"Company Promissory Note"** means the promissory note between the Vendor and the Company, a copy of which is annexed hereto as Schedule 1.1.10.

- 1.1.11 **“Company Shares”** means all of the issued and outstanding shares in the capital of the Company, as further described in Section 5.12 herein.
- 1.1.12 **“Consents and Approvals”** means all consents and approvals required to be obtained in connection with the execution and delivery of this Agreement and the completion of the transactions contemplated by this Agreement, and includes, without limitation, resolutions of the municipal councils of the Vendor and the Purchaser, as applicable, authorizing and approving the transactions contemplated by this Agreement.
- 1.1.13 **“Direct Claim”** means any claim asserted against an Indemnitor by an Indemnitee which does not result from a Third Party Claim.
- 1.1.14 **“Electricity Act”** means the *Electricity Act* (Ontario).
- 1.1.15 **“Employee Benefits”** means:
- (a) salaries, wages, bonuses, vacation entitlements, commissions, fees, stock option plans, stock purchase plans, incentive plans, deferred compensation plans, profit sharing plans and other similar benefits, plans or arrangements;
 - (b) insurance, health, welfare, disability, pension, retirement, travel, hospitalization, medical, dental, legal, counseling, eye care and other similar benefits, plans or arrangements; and
 - (c) agreements or arrangements with any labour union or employee association, written or oral employment agreements or arrangements and agreements or arrangements for the retention of the services of independent contractors, consultants or advisors.
- 1.1.16 **“Employees”** means all individuals employed by the Company or Erie Thames, as applicable, and, for greater certainty, includes those employees on short term disability leave, long term disability leave, absent on authorized leave under the *Workplace Safety and Insurance Act* (Ontario) or the *Employment Standards Act* (Ontario) or otherwise absent.
- 1.1.17 **“Encumbrances”** means any pledge, lien, charge, assignment by way of security, security agreement, conditional sale agreement, security interest, deed of trust, title retention agreement, mortgage, restriction, development or similar agreement, easement, right-of-way, title defect, option or adverse claim, certificate of pending litigation or encumbrance or any other rights of others of any kind or character whatsoever.
- 1.1.18 **“Environmental Laws”** means all Laws (as hereinafter defined) relating in full or in part to the protection of the environment, and includes, without limitation, those Laws relating to the storage, generation, use, handling, manufacture, processing, transportation, treatment, presence, release, management, and disposal of Hazardous Substances, waste, pollutants or contaminants.

- 1.1.19 **“Erie Thames Powerlines”** means Erie Thames Powerlines Corporation, an OEB-licensed electricity distributor that is a wholly-owned subsidiary of the Purchaser.
- 1.1.20 **“ERTH”** means the Purchaser and its Subsidiaries.
- 1.1.21 **“ERTH Shares”** means the Voting Share and the Payments Shares, collectively.
- 1.1.22 **“Final Tax Returns”** has the meaning ascribed thereto in Section 11.2.
- 1.1.23 **“Financial Statements”** means, as applicable:
- (a) the audited financial statements of the Company as at December 31, 2006 consisting of a balance sheet of the Company as at December 31, 2006 and the accompanying statements of changes in financial position, operations and retained earnings for the 12 month period then ended, a copy of which is annexed hereto as Schedule 1.1.23(a); or
 - (b) the audited financial statements of the Purchaser as at December 31, 2006 consisting of the balance sheet of the Purchaser as at December 31, 2006 and the accompany statements of changes in financial position, operations and retained earnings for the 12 month period then ended, a copy of which is annexed hereto in Schedule 1.1.23(b).
- 1.1.24 **“GAAP”** has the meaning ascribed thereto in Section 1.3 herein.
- 1.1.25 **“Governmental Authority”** means any municipal, provincial, or federal government authority, including, without limitation, the OEB, any governmental department, agency, commission, board, tribunal, crown corporation, or court or other law, rule or regulation-making entity having or purporting to have powers of statutory enforcement, jurisdiction on behalf of Canada, or any province or other subdivision thereof or any municipality, district or other subdivision thereof.
- 1.1.26 **“Hazardous Substance”** means any substance or material, including petroleum and its by-products, asbestos, PCBs and any material or substance which is defined as a hazardous waste, hazardous substance, hazardous material, restricted hazardous waste, toxic waste, toxic substance, toxic or pollutant, a deleterious substance, a contaminant or source of pollution or contamination considered as such under any provision of Environmental Laws or by any Governmental Entity.
- 1.1.27 **“Income Tax Act”** means the *Income Tax Act* (Canada).
- 1.1.28 **“Indemnitee”** means any Party entitled to indemnification under this Agreement.
- 1.1.29 **“Indemnitor”** means any Party obligated to provide indemnification under this Agreement.
- 1.1.30 **“Indemnity Payment”** means any amount of a Loss required to be paid pursuant to Sections 12.3 or 12.4.

- 1.1.31 **“Independent Accountant”** has the meaning ascribed thereto in Section 4.1.2
- 1.1.32 **“Laws”** means all applicable laws, statutes, by-laws, rules, regulations, orders and ordinances together with all binding codes, guidelines, policies, notices, directions, directives, standards, licenses, permits, approvals, judgments, injunctions, awards and decrees or other requirements of any Governmental Authority and includes, without limitation, Environmental Laws.
- 1.1.33 **“Legal Proceeding”** means any litigation, demand, action, suit, investigation, hearing, claim, complaint, grievance, arbitration proceeding or any other proceedings in any form whatsoever, including without limitation, proceedings initiated by or conducted by on before any provincial or federal court, the OEB, the Workplace Safety and Insurance Board, the Human Rights Commission or Tribunal, the Ontario Ministry of Labour, or any other federal, provincial, municipal or other Governmental Authority, department, self regulatory organization, commission, board, bureau, agency or instrumentality, domestic or foreign, or in respect of any Employee Benefits or Pension Plan and includes any appeal or review and any application for same.
- 1.1.34 **“Licenses and Permits”** means all licenses, registrations, qualifications, permits, filings, authorizations, exemptions, consents and approvals required by the Company and EARTH, as applicable, to carry on its respective Businesses.
- 1.1.35 **“Loss”** means any and all loss, liability, damage, cost, expense, charge, fine, penalty or assessment, resulting from or arising out of any Claim, including the costs and expenses of any Legal Proceeding, assessment, judgment, settlement or compromise relating thereto and all interest, punitive damages, fines and penalties and reasonable legal fees and expenses incurred in connection therewith, including loss of profits and consequential damages.
- 1.1.36 **“Material Contracts”** means the contracts, agreements, instruments and other legally binding commitments or arrangements, written or oral, entered into by the Company or EARTH, as applicable.
- 1.1.37 **“OEB”** means the Ontario Energy Board.
- 1.1.38 **“OEB Act”** means the *Ontario Energy Board Act* (Ontario).
- 1.1.39 **“Parties”** means the Vendor and the Purchaser, and **“Party”** means any of them.
- 1.1.40 **“Payment Shares”** means 1,693,000 Class B shares in the capital of the Purchaser to be issued to the Vendor on the Closing Date, the attributes of which are annexed hereto as Schedule 1.1.40.
- 1.1.41 **“Purchaser”** means EARTH Corporation (formerly Erie Thames Power Corporation).
- 1.1.42 **“Put Option and Indemnity Agreement”** has the meaning ascribed thereto in Section 9.1.8.

- 1.1.43 **“Real Property”** means all real property owned by the Company or EARTH, as applicable, and includes all plant, buildings, structures, erections, improvements, appurtenances and fixtures situate thereon or forming part thereof.
- 1.1.44 **“Required Regulatory Approvals”** mean all those applications, notices, orders, licenses, consents and approvals of and to Governmental Authorities that will be required to complete and give effect to the transactions contemplated in this Agreement including, without limitation, an order by the OEB granting leave to acquire the Company Shares under subsection 86(2) of the OEB Act.
- 1.1.45 **“RDI”** means RDI Consulting Inc.
- 1.1.46 **“RDI Indemnity Agreement”** means an agreement in the form annexed hereto as Schedule 1.1.46.
- 1.1.47 **“Shareholder Agreement”** means the unanimous shareholder agreement to which the shareholders of the Purchaser are bound, a copy of which is attached hereto as Schedule 1.1.47.
- 1.1.48 **“Storage Tanks”** means above or underground tanks, the operation, maintenance, removal and decommissioning of which tanks are regulated pursuant to applicable Environmental Laws.
- 1.1.49 **“Subsidiaries”** means the Purchaser’s wholly- and partially- owned subsidiaries on the date of this Agreement, as listed in the corporate chart of the Purchaser set out in Schedule 1.1.49.
- 1.1.50 **“Tax”** or **“Taxes”** means all taxes including payments in lieu of taxes imposed under section 93 of the Electricity Act (or, in the case of certain Subsidiaries, any taxes imposed pursuant to the *Corporations Tax Act* (Ontario) or the Income Tax Act), any charges, fees, levies, imposts, and other assessments and charges of any kind whatsoever imposed by any Governmental Authority, including all those levied on income, sales, use, goods and services, value added, capital, capital gains, alternative, net worth, transfer, profits, withholding, payroll, employer health, excise, franchise, real property and personal property taxes, and any other taxes, customs duties, fees, assessments or similar charges in the nature of a tax including the Canada Pension Plan and provincial pension plan contributions, employment insurance premiums and workers’ compensation premiums, together with any installments with respect thereto, and any interest, fines and penalties imposed by any Governmental Authority, and whether disputed or not, however, “Tax” or “Taxes” shall not include any Transfer Tax.
- 1.1.51 **“Tax Legislation”** means, collectively, the Income Tax Act and all federal, provincial, territorial, municipal, foreign, or other statutes imposing a tax, including all treaties, conventions, rules, regulations, orders, and decrees of any jurisdiction.
- 1.1.52 **“Tax Returns”** means all reports, elections, returns, and other documents required to be filed under the provisions of any Tax Legislation and any Tax forms required to be filed,

whether in connection with a Tax Return or not, under any provisions of any applicable Tax Legislation.

- 1.1.53 **“Term Sheet”** means the term sheet dated the March 6, 2008 executed between the Vendor, the Company, the Purchaser and Erie Thames Powerlines.
- 1.1.54 **“Third Party Claim”** means any Claim asserted against an Indemnitee that is paid or payable to, or claimed by, any person who is not a Party.
- 1.1.55 **“Transfer Tax”** means the transfer tax described in subsection 94(1) of the Electricity Act.
- 1.1.56 **“Vendor”** means the Municipality of West Perth.
- 1.1.57 **“Vendor’s Costs”** means \$15,000, which represents the transaction costs incurred by the Vendor in connection with completing the transactions contemplated in this Agreement.
- 1.1.58 **“Vendor’s Solicitors”** means Borden Ladner Gervais LLP.
- 1.1.59 **“Vendor’s Valuator”** means Henley International Inc.
- 1.1.60 **“Voting Share”** means one Class A share in the capital of the Purchaser, the attributes of which are annexed hereto as Schedule 1.1.60.

1.2 Gender and Number

In this Agreement words importing a specific gender include all genders and words importing the singular include the plural and vice versa.

1.3 Accounting Principles

Wherever in this Agreement, reference is made to generally accepted accounting principles (“GAAP”), such reference shall be deemed to be to the generally accepted accounting principles from time to time approved by the Canadian Institute of Chartered Accountants, or any successor entity, applicable as at the date on which such principles are applied.

1.4 Headings

The division of this Agreement into Articles and Sections and the use of a table of contents and headings are for convenience of reference only and shall not affect the interpretation of this Agreement.

1.5 Contra Proferentem

Each of the Parties acknowledges that its respective legal counsel has participated in the drafting of this Agreement and that the rule of contra proferentem shall not apply with respect to the interpretation of this Agreement.

1.6 Knowledge

(a) Where any representation, warranty or other statement in this Agreement is expressed to be made by the Vendor to its knowledge or is otherwise expressed to be limited in scope to matters known to the Vendor, or of which the Vendor is aware, it shall mean such knowledge as is actually known to, or which would have or should have come to the attention of the Vendor, the Company, and the directors, officers or employees of the Vendor and the Company who have overall responsibility for knowledge of the matters relevant to such statement and the Vendor hereby confirms that it has made appropriate inquiries of its board of directors, and that such directors have made the appropriate inquiries of the officers and employees of the Company.

(b) Subject to Section 1.6(c), where any representation, warranty or other statement in this Agreement is expressed to be made by the Purchaser and its Subsidiaries, as applicable, to its or their knowledge or is otherwise expressed to be limited in scope to matters known to the Purchaser and its Subsidiaries, or of which the Purchaser and its Subsidiaries is or are aware, it shall mean such knowledge as is actually known to, or which would have or should have come to the attention of the Purchaser and its Subsidiaries, and the directors, officers or employees of the Purchaser and its Subsidiaries who have overall responsibility for knowledge of the matters relevant to such statement and the Purchaser and its Subsidiaries hereby confirm that they have made appropriate inquiries of all such directors, officers and employees.

(c) Notwithstanding Section 1.6(b), where any representation, warranty or other statement in this Agreement is made by the Purchaser in respect to one of its partially-owned subsidiaries (as that term is defined in the *Business Corporations Act* (Ontario)), such representation, warranty or other statement shall, whether stated or not, be deemed to be made with the Purchaser's knowledge in accordance with Section 1.6(b).

1.7 Remedies Cumulative

Subject to Article 2, the rights, remedies, powers and privileges herein provided to a Party are cumulative and in addition to and not exclusive of or in substitution for any rights, remedies, powers and privileges otherwise available to that Party.

1.8 Additional Rules of Interpretation

(a) Unless something in the subject matter or context is inconsistent therewith, references herein to an Article, Section, Subsection, paragraph, clause, Schedule or Exhibit are to the applicable article, section, subsection, paragraph, clause, Schedule or Exhibit of this Agreement.

(b) Wherever the words "include", "includes", or "including" are used in this Agreement or in any closing document, they shall be deemed to be followed by the words "without limitation" and the words following "include", or "including" shall not be considered to set forth and exhaustive list.

(c) The words “hereof”, “herein”, “hereto”, “hereunder”, “hereby” and similar expressions shall be construed as referring to this Agreement in its entirety and not to any particular section or portion of it.

(d) Unless otherwise specified, all dollar amounts in this Agreement, including the symbol “\$”, refer to Canadian currency.

(e) Unless otherwise indicated, all references in this Agreement to any statute include the regulations thereunder and applicable guidelines, bulletins or policies made in connection therewith and which are legally binding, in each case as amended, re-enacted, consolidated or replaced from time to time and in the case of any such amendment, re-enactment, consolidation or replacement, reference herein to a particular provision shall be read as referring to such amended, re-enacted, consolidated or replaced provision.

(f) All references herein to any agreement (including this Agreement), document or instrument mean such agreement, document or instrument as amended, supplemented, modified, varied, restated or replaced from time to time in accordance with the terms thereof and, unless specified therein, includes all schedules and exhibits attached thereto.

(g) Unless the context otherwise requires, references in this Agreement to a “person” are to be broadly interpreted and shall include an individual (whether acting as an executor, administrator, legal representative or otherwise), body corporate, unlimited liability company, partnership, limited liability partnership, joint venture, trust, unincorporated association, unincorporated syndicate, any governmental authority and any other legal or business entity.

(h) The term “ordinary course”, when used in relation to the conduct by the Company or ERTH of its respective Business means any transaction which constitutes an ordinary day-to-day business activity, conducted in a commercially reasonable and businesslike manner, having no unusual or special features, and, in the case of the Company and ERTH, consistent with past practice.

(i) Unless otherwise defined herein, words or abbreviations which have well-known trade meanings are used herein with those meanings.

ARTICLE 2 **SCHEDULES**

2.1 Schedules

The following are the Schedules annexed hereto and incorporated by reference and deemed to be part hereof:

Schedule 1.1.10	-	Company Promissory Note
Schedule 1.1.23(a)	-	Financial Statement (Company)
Schedule 1.1.23(b)	-	Financial Statements (Purchaser)
Schedule 1.1.40	-	Payment Share Attributes
Schedule 1.1.46	-	RDI Indemnity Agreement
Schedule 1.1.47	-	ERTH Shareholder Agreement

Schedule 1.1.49	-	ERTH Corporate Chart
Schedule 1.1.60	-	Voting Share Attributes
Schedule 5.7	-	Shareholder Declaration
Schedule 5.18	-	Personal Property (Company)
Schedule 5.28	-	Machinery & Equipment (Company)
Schedule 6.16	-	Undisclosed Liability (Purchaser)
Schedule 6.18	-	Business in Ordinary Course (Purchaser)
Schedule 6.28	-	Collective Bargaining Agreement (Purchaser)
Schedule 9.1.8	-	Put Option and Indemnity Agreement
Schedule 10.5	-	Release
Schedule 11.6	-	Lease Agreement
Schedule 11.7	-	Bill of Sale
Schedule 11.8	-	Service Quality Indicators

ARTICLE 3
AGREEMENT FOR PURCHASE AND SALE

3.1 Agreement for Purchase and Sale

Upon and subject to the terms and conditions in this Agreement, on the Closing Date:

- (a) the Vendor hereby agrees to sell, assign, and transfer to the Purchaser, and the Purchaser hereby agrees to purchase, the Company Shares; and
- (b) the Purchaser hereby agrees to issue to the Vendor, and the Vendor hereby agrees to subscribe for the issuance of, the Payment Shares.

3.2 Consideration for Company Shares

The aggregate consideration for the Company Shares is the Payment Shares.

ARTICLE 4
CLOSING DATE FINANCIAL STATEMENTS

4.1 Preparation of Closing Date Financial Statements

4.1.1 Initial Preparation

- (a) Promptly after the Closing Date, each Party will, at their own expense, prepare or cause to be prepared, the Closing Date Financial Statements, which Closing Date Financial Statements shall be prepared in accordance with GAAP, applied on a basis consistent with the

preparation of the Financial Statements (subject to the fact that the Closing Date Financial Statements are not consolidated). The Vendor's Closing Date Financial Statements shall make adequate provision for the Taxes which relate to any taxation year or part thereof ending or arising before the Closing Date or ending as a consequence of the Closing which are not yet due and payable and for which Tax Returns are not yet required to be filed, and all vacation pay, bonuses, commissions and other payments under the Employee Benefits and Pensions Plan, if any, payable to the Employees shall be properly reflected and accrued in the Vendor's Closing Date Financial Statements. To assist the other Vendor for these purposes, the Purchaser shall provide to the Vendor and their authorized representatives such reasonable cooperation, assistance and access to all relevant books, records and personnel as may be required for timely and accurate preparation of the Closing Date Financial Statements.

(b) Each Party shall deliver drafts of their respective Closing Date Financial Statements no later than the 120th day following the Closing Date. If a Party does not give a notice of disagreement in accordance with Section 4.1.2, said Party shall be deemed to have accepted the drafts of the Closing Date Financial Statements, which shall be final and binding on the Parties for all purposes, including the purposes of this Agreement, immediately following the expiry date for the giving of such notice of disagreement.

4.1.2 Dispute Settlement

Each Party shall have 30 days after its receipt of the draft Closing Date Financial Statements to review same. If a Party disagrees with any items in the draft Closing Date Financial Statements prepared pursuant to Section 4.1.1, said Party shall give notice to the other Party of such disagreement. Any notice of disagreement given by a Party shall set forth in detail the particulars of such disagreement. The Parties shall then use reasonable efforts to resolve such disagreement for a period of 30 days following the giving of such notice. If the matter is not resolved by the end of such 30 day period, then such disagreement shall be submitted by the Parties to an accounting firm of recognized national standing in Canada, which is independent of the parties (the "Independent Accountant") as agreed by the Parties. The Independent Accountant shall, as promptly as practicable (but in any event within 45 days following its appointment), make a determination in respect of the dispute concerning the Closing Date Financial Statements based on submissions of the Parties to the Independent Accountant. The decision of the Independent Accountant as to the Closing Date Financial Statements shall be final and binding upon the Parties for all purposes, including the purposes of the Agreement. The Parties shall each pay one-half of the fees and expenses of the Independent Accountant with respect to the resolution of the dispute.

4.2 Retained Earnings

4.2.1 Company

To the Vendor's knowledge, the Company's retained earnings on the Closing Date, as reflected in the Closing Date Financial Statements, shall not be less than those set out in the Financial Statements.

4.2.2 Vendor

The Purchaser's retained earnings on the Closing Date, as reflected in the Purchaser's Closing Date Financial Statements, shall not be less than those set out in the Financial Statements.

ARTICLE 5 **VENDOR'S REPRESENTATIONS AND WARRANTIES**

The Vendor hereby represents and warrants to the Purchaser as follows, and acknowledges that the Purchaser is relying on such representations and warranties in connection with the transactions herein contemplated:

5.1 Incorporation of the Vendor

The Vendor is a municipality duly incorporated and validly existing under the laws of the Province of Ontario. No proceedings or governmental action have been instituted or are pending that could reasonably be expected to have a material adverse effect on the ability of the Vendor to carry out the transactions contemplated hereunder. The Vendor has the necessary power, authority and capacity to own or lease and use its property and assets.

5.2 Due Authorization

The Vendor has all necessary Consents and Approvals, corporate power, authority and capacity to enter into this Agreement and to carry out its obligations under this Agreement, including, without limitation, the sale by the Vendor to the Purchaser of the Company Shares and the purchase of and subscription by the Vendor for the EARTH Shares as contemplated herein. The execution and delivery of this Agreement and the consummation of the transactions contemplated by this Agreement have been duly authorized by all necessary corporate action on the part of the Vendor. Without limiting the generality of the foregoing, the execution and the delivery of this Agreement and the completion of the transactions herein contemplated have been duly and validly authorized by municipal council or board of directors, as applicable, of the Vendor by means of a resolution or by-law passed in accordance with all applicable law and in accordance with all necessary procedure and pre-conditions to the adoption of such resolution or by-law.

5.3 Incorporation of the Company

The Company is duly incorporated, organized and subsisting under the laws of the Province of Ontario, the Company is a corporation established pursuant to section 142 of the Electricity Act, and no proceedings have been instituted or are pending for the dissolution of the Company.

5.4 Qualification to do Business

The Company has all necessary corporate power, authority and capacity to own its property and assets and to carry on its Business as currently conducted. To the Vendor's knowledge, the Company has made all necessary filings under all applicable Laws, except for

such filings where the failure to file would not have a material adverse effect on the Company, and the Company does not conduct its Business in any jurisdiction other than the Province of Ontario.

5.5 Enforceability of Obligations

This Agreement constitutes a valid and binding obligation of the Vendor enforceable against the Vendor in accordance with its terms, subject, however, to (i) limitations with respect to enforcement imposed by law in connection with bankruptcy or similar proceedings and to the extent that equitable remedies such as specific performance and injunction are in the discretion of the court from which they are sought; and (ii) receipt of all Required Regulatory Approvals.

5.6 Right to Sell

The Vendor is the sole registered and beneficial owner of the Company Shares free and clear of all Encumbrances. The Vendor has the exclusive rights to dispose of the Company Shares as provided in this Agreement, subject to receipt of all Required Regulatory Approvals and Consents and Approvals, and such disposition will not violate, contravene, breach or offend against or result in any default under any indenture, mortgage, lease, agreement, obligation, instrument, charter or by-law provision, statute, regulation, order, judgment, decree, license, permit or law to which either the Vendor or the Company is bound or affected.

5.7 Shareholder Direction

The Company Shares are subject to a shareholder direction related to the Company, a true copy of which is attached hereto as Schedule 5.7.

5.8 Company Promissory Note

The Company Promissory Note represents the only indebtedness of the Company to the Vendor, except for any liabilities arising in the normal course of business. At Closing, the amount of the Company Promissory Note will be the amount set out in Schedule 1.1.10. The Vendor has not previously sold, conveyed, assigned or transferred the Company Promissory Note (or any part thereof). The Vendor has not taken any action to demand or accelerate repayment of the Company Promissory Note.

5.9 Bankruptcy

The Company has not committed an act of bankruptcy for which it has not been discharged, the Company is not insolvent, nor has the Company proposed a compromise or arrangement to its creditors generally, or had any petition for a receiving order in bankruptcy filed against it, or made a voluntary assignment in bankruptcy, or taken any proceeding with respect to a compromise or arrangement, or taken any proceeding to have itself declared bankrupt or wound-up, as applicable, or taken any proceeding to have a receiver appointed in respect of any part of its respective assets, or had any encumbrancer take possession of any of its respective property, or assets or had any execution or distress become enforceable or become levied upon any of its assets or property.

5.10 Tax Status

The Vendor and the Company are municipal corporations for the purposes of paragraph 149(1)(d.5) of the Income Tax Act.

5.11 Undisclosed Subsidiaries

To the Vendor's knowledge, the Company does not own, or have any interest in, any shares of any corporation, subsidiary or affiliate, as such terms are defined in the Business Corporations Act (Ontario), nor has the Company entered into any agreements of any nature to acquire any subsidiary or to acquire or lease any other business operations.

5.12 Capitalization of the Company

The authorized capital of the Company consists of an unlimited number of common shares of which 1000 number of common shares (and no more) are currently and shall be issued and outstanding at Closing. All of the Company Shares have been duly and validly issued and are outstanding as fully paid and non-assessable shares and all of the Company Shares are owned by the Vendor as the registered and beneficial owner thereof with good and marketable title thereto, free and clear of all Encumbrances. No options, warrants, or other rights to purchase shares or other securities of the Company, and no securities or obligations convertible into or exchangeable for shares or other securities of the Company, have been authorized or agreed to be issues or are outstanding.

5.13 Absence of Conflicting Agreements

To the Vendor's knowledge, neither the Vendor nor the Company is a party to, bound or affected by or subject to any indenture, mortgage, lease, agreement, obligation, instrument, charter or by-law provision, statute, regulation, order, judgment, decree, license, permit or Law which would be violated, contravened, or breached by, or under which default would occur as a result of, the execution and delivery of this Agreement or the performance by them of any of their obligations provided for under this Agreement.

5.14 Financial Statements

The Financial Statements have been prepared in accordance with GAAP applied on a basis consistent with those of preceding periods, and present fairly in all material aspects:

- (a) all of the assets, liabilities (whether accrued, absolute, contingent or otherwise) and the financial position of the Company as at December 31, 2006; and
- (b) the revenues, earnings and results of operations of the Company as at December 31, 2006.

5.15 Validly Declared Dividends

All dividends, which up to the Closing Date have been declared or paid by the Company, have been duly and validly declared and paid.

5.16 Absence of Undisclosed Liabilities

To the Vendor's knowledge, the Company has no liabilities (whether accrued, absolute, contingent or otherwise matured or unmatured) except liabilities incurred in the ordinary course or business and attributable to the period since the date of the Financial Statements, which are not, either individually or in the aggregate, materially adverse to the Business, or to the operations, affairs, prospects or condition (financial or otherwise) of the Company.

5.17 No Material Adverse Change

Since the date of the Financial Statements, to the Vendor's knowledge there has been no material adverse change in the Business or in the operations, affairs, prospects or condition (financial or otherwise) of the Company, including revocation of any of the Licenses and Permits or as a result of fire, explosion, accident, casualty, labour problem, flood, drought, riot, storm, act of God or otherwise, except for changes occurring in the ordinary course of business and which, either individually or in the aggregate, have not materially adversely affected and will not materially adversely affect the Business or the operations, affairs, prospects or condition (financial or otherwise) of the Company.

5.18 Title to Personal Property

To the Vendor's knowledge, and except as disclosed in Schedule 5.18, the Company is the sole beneficial and (where its interests are registrable) the sole registered owner of all personal property shown or reflected on the Financial Statements, with good and marketable title, free and clear of all Encumbrances and claims other than such personal property of the Company as have been disposed of or acquired in the normal course of business since the date of the Financial Statements.

5.19 Tax Filings

To the Vendor's knowledge, the Company has prepared and filed with all appropriate Governmental Authorities, all Tax Returns, declarations, remittances, information returns, reports, payments in lieu of taxes and other documents of every nature required to be filed by or on behalf of the Company respectively, in respect of any Taxes for all fiscal periods and will continue to do so in respect of any fiscal period ending before the Closing Date. All such returns, declarations, remittances, information returns, reports, payments in lieu of taxes and other documents are correct and complete in all material respects, and no material fact has been omitted therefrom. No extension of time in which to file any such returns, declarations, remittances, information returns, reports or other documents is in effect. To the Vendor's knowledge, the all Taxes shown on all such Tax Returns or on any assessments or reassessments in respect of any such returns have been paid in full.

5.20 Taxes Paid

To the Vendor's knowledge, the Company has paid in full all Taxes due and payable by it and has made adequate provision in its financial statements in accordance with GAAP for the payment of all Taxes in respect of all fiscal periods ending before the Closing Date.

5.21 Reassessment of Taxes

To the Vendor's knowledge, there are no reassessments of Taxes that have been issued and which remain unpaid or unresolved against the Company for all taxation years prior to and including the Closing Date. There is no proceeding, investigation, claim, re-assessment or audit now pending or, to the knowledge of the Vendor, threatened in writing in respect of any Tax owing by the Company. The Company has not executed or filed with any Governmental Authority any agreement or waiver extending the period for assessment, reassessment or collection of any Taxes.

5.22 Tax Data

The Vendor has provided to the Purchaser information, complete and accurate in all material respects which is within the vendor's knowledge, relating to the Company in respect of its Tax Returns filed with the appropriate Governmental Authorities and relating to the adjusted cost bases of non-depreciable capital properties and undepreciated capital cost of depreciable properties.

5.23 Absence of Guarantees

To the Vendor's knowledge, the Company has not given or agreed to give, or is a party to or bound by, any guarantee or indemnity in respect of any indebtedness, or other obligations, of any Person, or any other commitment by which the Company is, or is contingently, responsible for such indebtedness or other obligations.

5.24 Business in Compliance with Laws

The Vendor has not received any written notice of alleged breach of any Laws relating to the operation, business, properties and assets of the Company.

5.25 Legal Proceedings

To the Vendor's knowledge, there is no Legal Proceeding outstanding, pending or threatened in writing against the Vendor or the Company, or the Business, Real Property or personal property and assets which, if determined adversely to the Vendor or the Company, would:

- (a) materially and adversely affect the assets property, operations, business, future prospects or financial condition of the Company;
- (b) enjoin, restrict or prohibit the transfer of all or any part of the Company Shares as contemplated by this Agreement; or
- (c) prevent the Vendor or the Company from fulfilling all of its respective obligations set out in this Agreement or the Material Contracts to which it is a party,

and the Vendor has no knowledge of any existing ground on which any such Legal Proceeding might be commenced with any reasonable likelihood of success.

5.26 Environmental Matters

To the Vendor's knowledge:

- (a) The Company, the operation of the Business and the assets owned or used by the Company have been and are in compliance with all Environmental Laws;
- (b) The Company has not been charged with or convicted of any offence for non-compliance with Environmental Laws, or been fined or otherwise sentenced or settled any prosecution short of conviction, and there are no notices of judgment or commencement of proceedings of any nature and the Company has never been investigated relating to any breach or alleged breach of Environmental Laws;
- (c) The Company is not, and there is no basis upon which the Company could become, responsible for any clean-up or corrective action under any Environmental Laws;
- (d) None of the Real Property or facilities currently owned or leased by the Company has been used for the disposal, storage, processing or handling of waste of Hazardous Substances or have been designated as a waste disposal, storage, processing, treatment or handling site pursuant to any Environmental Laws;
- (e) No release, discharge, emission, deposit or escape of a Hazardous Substance to the natural environment has occurred at or from the Real Property or facilities currently owned or leased by the Company and no Hazardous Substances are present at the Real Property or facilities currently owned or leased by the Company, in either case, except in compliance with all applicable Environmental Laws; and
- (f) There are no Storage Tanks at the Real Property, whether owned or leased by the Company and the Company does not own or lease any Storage Tanks at any other site.

5.27 Intellectual Property

To the Vendor's knowledge, the conduct of the Business does not infringe upon the patents, service marks, trade marks, trade names, industrial designs, copyrights and other industrial property rights, domestic or foreign, of any other person, firm or corporation.

5.28 Machinery and Equipment

To the Vendor's knowledge, and except as disclosed in Schedule 5.28, all machinery and equipment owned or used by the Company has been properly maintained and is in good working order for the purposes of ongoing operation in the conduct of the business of the Company, subject to ordinary wear and tear for machinery and equipment of comparable age occurring in the normal course.

5.29 Licenses, Registrations, Etc.

To the Vendor's knowledge, the Company possesses all Licenses and Permits, certificates of approval and quotas necessary or required in order for the Company to conduct its business as now conducted including any and all regulatory Licenses and Permits as required under all applicable Laws, including but not limited to, the OEB Act, the *National Energy Board Act* (Canada), the Electricity Act, the *Public Utilities Act* (Ontario), the *Municipal Franchises Act* (Ontario) and to own, lease or operate its property and assets, the absence of which would have a material adverse effect upon the Company. To the Vendor's knowledge, all the Licenses and Permits are in full force and effect, the Company is not in violation of any material term or provision or requirement of any such Licenses and Permits, and no Person has provided written notice to the Company of any threat to revoke, amend or impose any condition in respect of, or commenced proceedings to revoke, amend or impose conditions in respect of, any License or Permit.

5.30 Transfer By-law and Real Property Interests

To the Vendor's knowledge, the Company holds the beneficial and legal title to the Real Property interests set out in Schedules B to By-Law Number 62-2000 of the Vendor, free and clear of all Encumbrances. To the Vendor's knowledge, all such Real Property is in material compliance with all applicable Laws and shall not cease to comply with all applicable Laws by virtue only of the execution of this Agreement and the transfer of the Company Shares.

5.31 Full Disclosure

To the best of the Vendor's knowledge, the Vendor has not withheld from the Purchaser any facts relating to the Company which would be material to an intended purchaser thereof. The Vendor has no knowledge of any facts, subject to Section 1.6 herein, relating to the Company not herein disclosed, which might be reasonably expected to deter the Purchaser from completing the transaction herein contemplated.

ARTICLE 6 **REPRESENTATIONS AND WARRANTIES OF THE PURCHASER**

The Purchaser hereby represents and warrants to the Vendor as follows and acknowledges that the Vendor is relying on such representations and warranties in connection with the transactions herein contemplated:

6.1 Incorporation and Organization

The Purchaser and its Subsidiaries are corporations incorporated and validly subsisting under the laws of the Province of Ontario, the Purchaser is a corporation established pursuant to section 142 of the Electricity Act, and no proceedings have been instituted or are pending for the dissolution or liquidation of the Purchaser or its Subsidiaries.

6.2 Qualification to do Business

The Purchaser and its Subsidiaries have the necessary corporate power, authority and capacity to own or lease its property and assets and to carry on its Businesses, as now being conducted by them, and is qualified to carry on such Businesses under the laws of each jurisdiction in which the nature of such Businesses as carried on by it makes such qualification necessary.

6.3 Due Authorization

The Purchaser has the necessary corporate power, authority and capacity to enter into this Agreement, to purchase the Company Shares from the Vendor, to issue the ERTHs Shares to the Vendor as herein contemplated, to execute and comply with the terms of the Put Option Agreement, and to perform its other obligations hereunder. The execution and delivery of this Agreement and the consummation of the transactions contemplated by this Agreement have been duly authorized by all necessary corporate action of the Purchaser.

6.4 Enforceability of Obligations

This Agreement constitutes a valid and binding obligation of the Purchaser enforceable against the Purchaser in accordance with its terms, subject, however, to (i) limitations with respect to enforcement imposed by law in connection with bankruptcy or similar proceedings and to the extent that equitable remedies such as specific performance and injunction are in the discretion of the court from which they are sought; and (ii) receipt of all Required Regulatory Approvals.

6.5 Right to Issue the ERTH Shares and Execute the Put Option Agreement

The Purchaser has the exclusive rights to issue of the ERTH Shares as provided in this Agreement and to enter into the Put Option Agreement, subject to receipt of all Required Regulatory Approvals and Consent and Approvals, and neither the issuance of the ERTH Shares nor the execution of the Put Option Agreement will violate, contravene, breach or offend against or result in any default under any indenture, mortgage, lease, agreement, obligation, instrument, charter or by-law provision, statute, regulation, order, judgment, decree, license, permit or law to which the Purchaser is bound or affected.

6.6 Shareholder Agreement

The ERTH Shares are subject to the Shareholder Agreement, a true copy of which is annexed hereto as Schedule 1.1.47.

6.7 Bankruptcy

Neither the Purchaser nor its Subsidiaries has committed an act of bankruptcy for which it has not been discharged, neither the Purchaser nor its Subsidiaries are insolvent, nor has the Purchaser or its Subsidiaries proposed a compromise or arrangement to its creditors generally, or had any petition for a receiving order in bankruptcy filed against it, or made a voluntary assignment in bankruptcy, or taken any proceeding with respect to a compromise or arrangement, or taken any proceeding to have itself declared bankrupt or wound-up, as applicable, or taken any proceeding to have a receiver appointed in respect of any part of their

respective assets, or had any encumbrancer take possession of any of their respective property, or assets or had any executive or distress become enforceable or become levied upon any of their assets or property.

6.8 Tax Status

The Purchaser is a municipal corporation for the purposes of paragraph 149(1)(d.5) of the Income Tax Act.

6.9 Subsidiaries and Affiliates

Schedule 1.1.49 lists all of the Purchaser’s subsidiaries and affiliates, as those terms are defined in the Business Corporations Act (Ontario).

6.10 Capitalization of the Purchaser

The authorized capital of the Purchaser consists of an unlimited number of Class A shares (the attributes of which are attached hereto as Schedule 1.1.60) and an unlimited number of Class B shares (the attributes of which are attached hereto as Schedule 1.1.40), of which the following (and no more) are issued and outstanding on the date of this Agreement:

<u>Shareholder</u>	<u>Class A</u>	<u>Class B</u>
Town of Aylmer	1	3,795,165.57
Municipality of Central Elgin	1	1,805,784.55
Twonship of East Zorra-Tavistock	1	1,274,276.93
Town of Ingersoll	1	7,617,996.37
Township of Norwich	1	1,710,213.78
Township of South-West Oxford	1	430,068.46
Township of Zorra	1	1,366,494.34
	7	18,000,000

All of the authorized and issued shares in the capital of the Purchaser have been duly and validly issued and are outstanding as fully paid and non-assessable shares.

6.11 Absence of Conflicting Agreements

The Purchaser is not a party to, bound or affected by or subject to any indenture, mortgage, lease, agreement, obligation, instrument, charter or by-law provision, statute, regulation, order, judgment, decree, license, permit or Law which would be violated, contravened, or breached by, or under which default would occur or an Encumbrance would be created as a result of, the execution and delivery of this Agreement or the performance by it of any of its obligations provided for under this Agreement.

6.12 Full Disclosure

To the best of the Purchaser's knowledge, the Purchaser has not withheld from the Purchaser any facts relating to the Purchaser or its Subsidiaries which would be material to the Vendor. The Purchaser has no knowledge of any facts, nor are there any facts which should reasonably be known to the Purchaser relating to the Purchaser and its Subsidiaries, not herein disclosed or disclosed to the Vendor's Valuator, which might be reasonably expected to diminish the Purchaser's appreciation of the worth or profitability of the Purchaser or its Subsidiaries or which, if known by the Purchaser, might be reasonably expected to deter it from completing the transaction herein contemplated.

6.13 Vendor's Valuator

To the best of the Purchaser's knowledge, all of the information and documentation provided to the Vendor's Valuator was true, accurate and correct in every respect and there will be no material adverse change to such information and documentation before Closing.

6.14 Financial Statements

The Financial Statements have been prepared in accordance with GAAP applied on a basis consistent with those of preceding periods, and present fairly in all material aspects:

- (a) all of the assets, liabilities (whether accrued, absolute, contingent or otherwise) and the financial position of the Purchaser as at December 31, 2006; and
- (b) the revenues, earnings and results of operations of the Purchaser as at December 31, 2006.

6.15 Validly Declared Dividends

All dividends, which up to the Closing Date have been declared or paid by the Purchaser, have been duly and validly declared and paid.

6.16 Absence of Undisclosed Liabilities

Subject to Schedule 6.16 hereto, the Purchaser and its Subsidiaries have no liabilities (whether accrued, absolute, contingent or otherwise matures or unmatured) except liabilities incurred in the ordinary course of business and attributable to the period since the date of the Financial Statements, which are not, either individually or in the aggregate, materially adverse to the Business, or to the operations, affairs, prospects or condition (financial or otherwise) of the Purchaser or its Subsidiaries.

6.17 No Material Adverse Change

Since the date of the Financial Statements, there has been no material adverse change in the Business, the level of retained earnings, or in the operations, affairs, prospects or condition (financial or otherwise) of the Purchaser or its Subsidiaries, including any such change arising as a result of a payment of dividends or return of capital to the shareholders of the Purchaser, any

change in any applicable Law, revocation of any of the Licenses and Permits or as a result of fire, explosion, accident, casualty, labour problem, flood, drought, riot, storm, act of God or otherwise, except for changes occurring in the ordinary course of business and which, either individually or in the aggregate, have not materially adversely affected and will not materially adversely affect the Business or the operations, affairs, prospects or condition (financial or otherwise) of the Purchaser or its Subsidiaries.

6.18 Conduct of Business in Ordinary Course

Since the date of the Financial Statements, the Businesses of the Purchaser and its Subsidiaries have been carried on in the ordinary course consistent with past practice.

6.19 Tax Filings

The Purchaser and its Subsidiaries have prepared and filed with all appropriate Governmental Authorities, all Tax Returns, declarations, remittances, information returns, reports, payments in lieu of taxes and other documents of every nature required to be filed by or on behalf of the Purchaser and its Subsidiaries respectively, in respect of any Taxes for all fiscal periods and will continue to do so in respect of any fiscal period ending before the Closing Date. All such returns, declarations, remittances, information returns, reports, payments in lieu of taxes and other documents are correct and complete in all material respects, and no material fact has been omitted therefrom. No extension of time in which to file any such returns, declarations, remittances, information returns, reports or other documents is in effect. All Taxes shown on all such Tax Returns or on any assessments or reassessments in respect of any such returns have been paid in full.

6.20 Taxes Paid

The Purchaser and its Subsidiaries have paid in full all Taxes due and payable and have made adequate provision in its financial statements in accordance with GAAP for the payment of all Taxes in respect of all fiscal periods ending before the Closing Date.

6.21 Reassessment of Taxes

There are no reassessments of Taxes that have been issued and which remain outstanding or unresolved against the Purchaser or its Subsidiaries for all taxation years prior to and including the Closing Date. There is no proceeding, investigation, claim, re-assessment or audit now pending or, to the knowledge of the Purchaser, threatened in writing in respect of any Tax owing by the Purchaser or the Subsidiaries. Neither the Purchaser nor its Subsidiaries have executed or filed with any Governmental Authority any agreement or waiver extending the period for assessment, reassessment or collection of any Taxes.

6.22 Tax Data

The Purchaser has provided to the Vendor information, complete and accurate in all material respects, relating to the Purchaser and its Subsidiaries in respect of its Tax Returns filed with the appropriate Governmental Authorities and relating to the adjusted cost bases of non-depreciable capital properties and the undepreciated capital cost of depreciable properties.

6.23 Business in Compliance with Laws

The operations, business, properties and assets of the Purchaser and its Subsidiaries have always and are now conducted, in all material respects, in compliance with all Laws, and the Purchaser or its Subsidiaries have not received any notice of alleged breach of any such Laws and there are no matters under discussion with any Governmental Authority relating to any orders, notices, remedial or corrective actions, or similar requirements where the matters covered by any such notice or any of the matters under discussion with any Governmental Authority could have a material adverse affect upon the Purchaser or its Subsidiaries.

6.24 Legal Proceedings

There is no Legal Proceeding outstanding or, to the knowledge of the Purchaser, pending or threatened against or relating to the Purchaser or its Subsidiaries, or their businesses, Real Property or personal property and assets which, if determined adversely to the Purchaser or its Subsidiaries, would:

- (a) materially and adversely affect the assets property, operations, business, future prospects or financial condition of the Purchaser or its Subsidiaries;
- (b) enjoin, restrict or prohibit the issuance of all or any part of the ERTS Shares as contemplated by this Agreement; or
- (c) prevent the Purchaser or its Subsidiaries from fulfilling all of its respective obligations set out in this Agreement or the Material Contracts to which they are a party,

and the Purchaser has no knowledge of any existing ground on which any such Legal Proceeding might be commenced with any reasonable likelihood of success.

6.25 Environmental Matters

(a) The Purchaser and the Subsidiaries, the operation of the Business and the assets owned or used by the Purchaser and the Subsidiaries have been and are in compliance with all Environmental Laws.

(b) The Purchaser and the Subsidiaries have not been charged with or convicted of any offence for non-compliance with Environmental Laws, or been fined or otherwise sentenced or settled any prosecution short of conviction, and there are no notices of judgment or commencement of proceedings of any nature and the Purchaser and the Subsidiaries have never been investigated relating to any breach or alleged breach of Environmental Laws

(c) None of the Purchaser or any of its Subsidiaries is, and there is no basis upon which the Purchaser or any Subsidiary could become, responsible for any clean-up or corrective action under any Environmental Laws.

(d) None of the Real Property or facilities currently owned or leased by the Purchaser or any of its Subsidiaries has been used for the disposal, storage, processing or handling of waste

of Hazardous Substances or have been designated as a waste disposal, storage, processing, treatment or handling site pursuant to any Environmental Laws.

(e) No release, discharge, emission, deposit or escape of a Hazardous Substance to the natural environment has occurred at or from the Real Property or facilities currently owned or leased by the Purchaser or any of its Subsidiaries and no Hazardous Substances are present at the Real Property or facilities currently owned or leased by the Purchaser or any of its Subsidiaries, in either case, except in compliance with all applicable Environmental Laws.

(f) There are no Storage Tanks at the Real Property, whether owned or leased by the Purchaser or any of its Subsidiaries and none of the Purchaser nor any of its Subsidiaries owns or leases any Storage Tanks at any other site.

6.26 Employment Matters

There are no actual or threatened complaints or proceedings, statutory or otherwise, against the Purchaser and its Subsidiaries pursuant to, without limitation, the *Pay Equity Act*, the *Employment Standards Act*, the *Labour Relations Act*, the Human Rights Code, the *Workplace Safety and Insurance Act*, the *Occupational Health and Safety Act* or before any other tribunal, strikes, lock-outs, work stoppages or other union organizing activities, grievances, arbitration cases or similar labour related disputes or proceedings. Further, to the knowledge of the Purchaser, the Purchaser and its Subsidiaries is not liable for any damages to any Employee or former Employee, nor does the Purchaser and its Subsidiaries have any obligation to reinstate any Employee or former Employee, whether unionized or non-unionized, resulting from the violation of any applicable employment or labour Law or employment agreement.

6.27 Withholdings and Remittances

The Purchaser and its Subsidiaries have withheld from each payment made to any of its present or former Employees, officers and directors, and to all persons who are non-residents of Canada for the purposes of the Income Tax Act all amounts required by law to be withheld, and furthermore, have remitted such withheld amounts within the prescribed periods to the appropriate Governmental Authority. The Purchaser and its Subsidiaries have remitted all Canada Pension Plan contributions, employment insurance and workers' compensation premiums, employer health taxes and other Taxes payable by them in respect of their respective Employees and have remitted such amounts to the proper Governmental Authority within the time required under the applicable Law. The Purchaser and its Subsidiaries have charged, collected and remitted on a timely basis all Taxes as required under any applicable Law on any sale, supply or delivery whatsoever, made by the Purchaser and its Subsidiaries, as the case may be.

6.28 Collective Agreement

Schedule 6.28 sets forth a true copy of the only current collective agreement applying to the Purchaser and its Subsidiaries, either directly or by operation of law, with any trade union or association which may qualify as a trade union and any memoranda of settlement and/or letters of understanding that may alter the terms and conditions of any such collective agreements.

6.29 Intellectual Property

The conduct of the Business does not infringe upon the patents, service marks, trade marks, trade names, industrial designs, copyrights and other industrial property rights, domestic or foreign, of any other person, firm or corporation.

6.30 Insurance

The Purchaser and its Subsidiaries maintain all insurance policies that are prudent and commercially reasonable in operating its Businesses and all such policies are in full force and effect and the Purchaser or its Subsidiaries are not in default whether as to payment of premiums or otherwise, under the terms of such policies.

6.31 Licenses, Registrations, Etc.

The Purchaser and its Subsidiaries possess all Licenses and Permits, certificates of approval and quotas necessary or required in order for the Purchaser and its Subsidiaries to conduct their business as now conducted including any and all regulatory Licenses and Permits as required under all applicable Laws, including but not limited to, the OEB Act, the *National Energy Board Act* (Canada), the *Electricity Act*, the *Public Utilities Act* (Ontario), the *Municipal Franchises Act* (Ontario) and to own, lease or operate its property and assets, the absence of which would have a material adverse effect upon the Purchaser and its Subsidiaries. All the Licenses and Permits are in full force and effect, the Purchaser and its Subsidiaries are not in violation of any material term or provision or requirement of any such Licenses and Permits, and no Person has provided notice in any form whatsoever to the Purchaser or its Subsidiaries of any threat to revoke, amend or impose any condition in respect of, or commenced proceedings to revoke, amend or impose conditions in respect of, any License or Permit.

6.32 Real Property

(a) The Purchaser and its Subsidiaries have good and marketable title to all of its Real Property. All such Real Property (including, without limitation, the improvements thereon) is in material compliance with all applicable Laws.

(b) To the knowledge of the Purchaser, neither the whole nor any part of the Real Property of the Purchaser or its Subsidiaries is subject to any existing or pending expropriation, condemnation or other taking by any Governmental Authority or other Person that has the right to expropriate real property, and no such expropriation, condemnation or other taking has been threatened. To the knowledge of the Purchaser, no public improvements with respect to the Real Property have been ordered to be made by any Governmental Authority that have not been completed, assessed and paid for prior to the date of this Agreement.

(c) There are no existing defaults by the Purchaser or, to the knowledge of the Purchaser, any other party under any Encumbrances, if any, relating to the Real Property.

(d) The Purchaser has not received any written work order, deficiency notice, notice of violation or other similar communication from any Governmental Authority or board of

insurance underwriters or otherwise which is outstanding, requiring that work or repairs in connection with its Real Property, or any part thereof, is necessary or required.

ARTICLE 7 **COVENANTS**

7.1 Investigations and Availability of Records

(a) Between the date hereof and the Closing Date, the Vendor shall permit the Purchaser and any other representatives or agents of the Purchaser as appointed from time to time by the Purchaser (the "Purchaser's Agents") to make such investigations of the business, the property and assets of the Company, and the legal, financial and tax condition of the Company and its compliance with all Laws, Licenses and Permits and regulations as the Purchaser or the Purchaser's Agents deem necessary or desirable, acting reasonably; provided that such investigations shall be carried out without undue interference with the operations of the Company and Vendor shall use commercially reasonable efforts to co-operate in facilitating such investigations and shall furnish copies of all such documents and materials relating to such matters as may be reasonably required by or on behalf of the Purchaser and the Purchaser's Agents. Such investigators shall not, however, affect or mitigate the representations and warranties of the Vendor contained in this Agreement or in any agreement, certificate, affidavit, statutory declaration or other document delivered or given pursuant to this Agreement, which representations and warranties shall continue in full force and effect for the benefit of the Purchaser as provided in Section 12.1.

(b) Between the date hereof and the Closing Date, the Purchaser shall permit the Vendor's Solicitors and any other representatives or agents of the Vendor as appointed from time to time by the Vendor (the "Vendor's Agents") to make such investigations of the business, the property and assets of the Purchaser and its Subsidiaries, and the legal, financial and tax condition of the Purchaser and its Subsidiaries and their compliance with all Laws, Licenses and Permits and regulations as the Vendor, the Vendor's Solicitors or the Vendor's Agents deem necessary or desirable; provided that such investigations shall be carried out without undue interference with the operations of the Purchaser and its Subsidiaries, and the Purchaser shall co-operate fully in facilitating such investigations and shall furnish copies of all such documents and materials relating to such matters as may be reasonably required by or on behalf of the Vendor, the Vendor's Solicitors and the Vendor's Agents. The Vendor acknowledges that a number of the Purchaser's subsidiaries set forth in Schedule 1.1.52 are partially-owned with unrelated third parties and disclosure of certain information will be dependant on the approval of such third parties, and the Purchaser undertakes to use commercially reasonable efforts to obtain such approval. Such investigators shall not, however, affect or mitigate the representations and warranties of the Purchaser contained in this Agreement or in any agreement, certificate, affidavit, statutory declaration or other document delivered or given pursuant to this Agreement, which representations and warranties shall continue in full force and effect for the benefit of the Vendor as provided in Section 12.1.

7.2 Conduct of Business

(a) Between the date hereof and the Closing Date, the Vendor shall cause the Company, and the Purchaser shall cause the Purchaser and its Subsidiaries to:

(i) carry on its respective Businesses in the ordinary course (except as may be otherwise required or contemplated by the provisions of this Agreement, including this Section);

(ii) to preserve the business and the goodwill of suppliers, customers and others having relations with the Company, the Purchaser and its Subsidiaries, as the case may be, and to maintain in full force and effect all intellectual and industrial property rights owned by and all licence agreements or arrangements with respect to intellectual and industrial property rights held by the Company; and

(iii) continue in full force and effect the insurance coverage currently in place and to cause the Company, the Purchaser and its Subsidiaries, as the case may be, to give all notices and to present all claims under all insurance policies in a due and timely fashion and to promptly advise the other Party in writing of any such claims.

(b) Between the date hereof and the Closing Date, the Vendor shall ensure that the Company does not (except as may be otherwise required or contemplated by the provisions of this Agreement, including this Section), without the prior written consent of the Purchaser:

(i) take any step to dissolve, wind-up or otherwise affect its continuing corporate existence or amalgamate or merge with any Person or amend its Articles of Incorporation or by-laws;

(ii) make any loan to or investment in any Person;

(iii) become a party to or bound by or subject to any new debt instrument or increase the amount of, amend or concur in the amendment of or prepay or vary the terms of any indebtedness or other obligation under any existing debt instrument;

(iv) declare or pay any dividend or other distribution (whether out of capital or surplus or otherwise) on any of its outstanding securities, if such distribution results in a violation of Section 5.16; or redeem, purchase or otherwise acquire any of its outstanding securities other than as may be contemplated by this Agreement;

(v) cancel, waive or vary the terms of any debt owing to or any claim or right of the Company;

(vi) issue any shares or other securities or make any change in the number or class of or rights attached to any issued or unissued shares of its capital stock or

grant, issue or make any option, warrant, subscription, convertible security or other right or commitment to purchase or acquire any shares of its capital stock or other securities; or

(vii) create or permit the creation of any new Encumbrance on any of its property or assets (except for any lien for unpaid Taxes not yet due) or amend or concur in the amendment of any such existing Encumbrance.

or agree or become bound to do any of the foregoing.

(c) Between the date hereof and the Closing Date, the Vendor shall cause the Company, and the Purchaser shall cause the Purchaser and its Subsidiaries:

(i) to prepare and file in a timely manner all Tax Returns required to be filed by it and pay all Taxes required under any applicable Law to be paid by it and to ensure that all such Tax Returns are true, correct and complete in all material respects and that such Tax Returns and all materials accompanying such Tax Returns reflect complete and accurate disclosure;

(ii) to pay within the time prescribed by any applicable Law any required installments of Taxes;

(iii) to withhold from each payment made by it the amount of all Taxes and other deductions required under any applicable Law to be withheld therefrom and to pay all such amounts withheld to the relevant taxing or other authority within the time prescribed under any applicable Law; and

(iv) not to enter into any arrangements to provide for an extension of time with respect to any assessment or reassessment of Tax, the filing of any Tax Return or the payment of any Tax by it without the prior written consent of the Purchaser.

7.3 Submission of OEB Applications

The Purchaser shall be responsible for preparing and submitting applications to the OEB to obtain all of the Required Regulatory Approvals. Notwithstanding the foregoing, the Vendor and the Company shall cooperate with the Purchaser and take all necessary steps required to assist the Purchaser in preparing and submitting the above applications.

ARTICLE 8 **PURCHASER'S CONDITIONS OF CLOSING**

8.1 Conditions for the Benefit of the Purchaser

The transactions herein contemplated, including the transfer of the Company Shares and the issuance of the EARTH Shares in accordance with the terms of this Agreement, are subject to the following conditions, each of which is hereby declared to be for the exclusive benefit of the Purchaser. Each of such conditions is to be fulfilled or performed at or prior to the Closing. The

Vendor covenants and agrees to use its best efforts to cause each of such conditions to be fulfilled and/or performed at or prior to the Closing.

8.1.1 Representations and Warranties

The representations and warranties of the Vendor set forth in Article 5 shall be true and correct at the Closing with the same force and effect as if made at and as of such time.

8.1.2 Performance of Covenants

The Vendor shall have performed or complied with all of the terms, covenants and conditions of this Agreement to be performed or complied with by the Vendor at or prior to the Closing, including, without limitation, the covenants set forth in Article 7.

8.1.3 Closing Certificates

The Purchaser shall be furnished with such Closing Documents of directors or an officer of the Vendor or Company, as applicable, as may be reasonably necessary in order to establish that the terms, covenants and conditions contained in this Agreement have been performed or complied with by the Vendor and the Company, as the case may be, at or prior to the Closing have been performed and complied with and that the representations and warranties of the Vendor herein given are true and correct at the Closing.

8.1.4 Licenses and Permits

The Company shall have received, to the Purchaser's satisfaction, acting reasonably, all Licenses and Permits required to carry on the Business and shall have given such notices and made such filings as are required to be given or made under the Electricity Act, the OEB Act, the *Environmental Protection Act* (Ontario), the *Ontario Water Resources Act* (Ontario), the *Operation Engineers Act* (Ontario) and other applicable Laws to notify relevant authorities of the change of control of the Company contemplated hereby.

8.1.5 Consents and Approvals

The Vendor and the Company shall have received, to the Purchaser's satisfaction, acting reasonably, all of the Consents and Approvals and the Vendor shall have delivered to the Purchaser reasonable evidence thereof.

8.1.6 Required Regulatory Approvals

Subject to Section 7.3, the Required Regulatory Approvals shall have been received on terms and conditions satisfactory to the Purchaser, acting reasonably.

8.1.7 Satisfactory Closing Arrangements

The closing arrangements described in Section 10 below have been performed in manner satisfactory to the Purchaser, acting reasonably.

8.1.8 Satisfactory Completion of Due Diligence

The Purchaser shall have conducted due diligence necessary to satisfy itself, in its sole and unfettered discretion, with respect to the condition and operation of the Company.

8.1.9 Legal Matters

The form and legality of all matters incidental to the transactions contemplated in this Agreement shall be subject to the approval of the Purchaser, acting reasonably.

8.2 Non-Fulfillment of Conditions etc. for the Benefit of the Purchaser

In the event that any condition, obligation, covenant or agreement of any of the Vendor to be fulfilled or performed hereunder at or prior to the Closing, including, without limitation, the conditions set forth in this Article 8, shall not be fulfilled and/or performed at or prior to the Closing, the Purchaser may rescind this Agreement by notice to the Vendor and in such event the Purchaser shall be released from all obligations hereunder and, unless the Purchaser can show that the one or more conditions, obligations, covenants or agreements for the non-fulfillment or non-performance of which the Purchaser has rescinded this Agreement is or are reasonably capable of being fulfilled or performed or caused to be fulfilled or performed by the Vendor, then the Vendor shall also be released from all obligations hereunder; provided, however, that any of the said conditions, obligations, covenants, or agreements may be waived in whole or in part by the Purchaser without prejudice to the Purchaser's right of rescission in the event of the non-fulfillment and/or non-performance of any other condition, obligation, covenant or agreement, any such waiver to be binding on the Purchaser only if the same is in writing.

ARTICLE 9 **VENDOR'S CONDITIONS OF CLOSING**

9.1 Conditions for the Benefit of the Vendor

The transactions herein contemplated, including the transfer of the Company Shares and the issuance of and subscription for the EARTH Shares in accordance with the terms of this Agreement, are subject to the following conditions, each of which is hereby declared to be for the exclusive benefit of the Vendor. Each of such conditions is to be fulfilled or performed at or prior to the Closing. The Purchaser covenants and agrees to use its best efforts to cause each of such conditions to be fulfilled and/or performed at or prior to the Closing.

9.1.1 Representations and Warranties

The representations and warranties of the Purchaser set forth in Article 6 shall be true and correct at the Closing with the same force and effect as if made at and as of such time.

9.1.2 Performance of Covenants

The Purchaser shall have performed or complied with all of the terms, covenants and conditions of this Agreement to be performed or complied with by the Purchaser at or prior to the Closing, including, without limitation, the covenants set forth in Article 7.

9.1.3 Closing Certificates

The Vendor shall be furnished with such Closing Documents of directors or an officer of the Purchaser or Erie Thames Powerlines, as applicable, as may be reasonably necessary in order to establish that the terms, covenants and conditions contained in this Agreement have been performed or complied with by the Purchaser and Erie Thames Powerlines, as the case may be, at or prior to the Closing have been performed and complied with and that the representations and warranties of the Purchaser herein given are true and correct at the Closing.

9.1.4 Consents and Approvals

The Purchaser shall have received, to the satisfaction of the Vendor's Solicitors, acting reasonably, all of the Consents and Approvals, and the Purchaser shall have delivered to the Vendor reasonable evidence thereof.

9.1.5 Required Regulatory Approvals

The Required Regulatory Approvals shall have been received on terms and conditions satisfactory to the Vendor, acting reasonably.

9.1.6 Satisfactory Closing Arrangements

The closing arrangements described in Section 10 below have been performed in manner satisfactory to the Vendor's Solicitors, acting reasonably.

9.1.7 Satisfactory Completion of Due Diligence

The Vendor shall have conducted due diligence necessary to satisfy itself, in its sole and unfettered discretion, with respect to the condition and operation of the Purchaser.

9.1.8 Put Option and Indemnity Agreement

The Put Option and Indemnity Agreement, in the form annexed hereto as Schedule 9.1.8, shall have been executed by the Purchaser contemporaneously with the Closing.

9.1.9 Legal Matters

The form and legality of all matters incidental to the transactions contemplated in this Agreement shall be subject to the approval of the Vendor's Solicitors, acting reasonably.

9.2 Non-Fulfillment of Conditions etc. for the Benefit of Vendor

In the event that any conditions, obligation, covenant or agreement of the Purchaser to be fulfilled or performed hereunder at or prior to the Closing, including, without limitation, the conditions set forth in this Article 9, shall not be fulfilled and/or performance at or prior to the Closing, the Vendor may rescind this Agreement by notice to the Purchaser and in such event the Vendor shall be released from all obligations hereunder and, unless the Vendor can show that the one or more conditions, obligations, covenants or agreements for the non-fulfillment or non-

performance of which the Vendor have rescinded this Agreement is or are reasonably capable of being fulfilled or performed or caused to be fulfilled or performed by the Purchaser, then the Purchaser shall also be released from all obligations hereunder; provided, however, that any of the said conditions, obligations, covenants or agreements may be waived in whole or in part by the Vendor without prejudice to the Vendor's right of rescission in the event of non-fulfillment and/or non-performance of any other condition, obligation, covenant or agreement, any such waiver to be binding on the Vendor's only if the same is in writing.

ARTICLE 10
CLOSING ARRANGEMENTS

10.1 Time and Place of Closing

The Closing shall take place on the Closing Date at 12:01 a.m. on the Closing Date at 143 Bell Street, Ingersoll, Ontario, or at such other time and places as may be agreed upon between the Parties.

10.2 Closing Arrangement

At the Closing and subject to the fulfillment of all the terms and conditions set forth in this Agreement which have not been waived in writing by the Parties, respectively:

(a) Transfer of the Company Shares

The Vendor shall:

(i) deliver to the Purchaser, the certificate representing the Company Shares duly endorsed in blank for transfer or accompanied by a stock transfer power; and

(ii) take, and shall cause the Company to take, all necessary steps and proceedings as approved by the Purchaser, acting reasonably, to permit the Company Shares to be duly and validly transferred to the Purchaser, to have such transfers duly and validly transferred to the Purchaser, to have such transfers duly and validly recorded on the books of the Company so that the Purchaser is entered on the books of the Company as the holder of the Company Shares, and to issue one or more share certificates to the Purchaser representing the Company Shares.

(b) Transfer of the Payment Shares

The Purchaser shall:

(i) deliver to the Vendor, the certificates representing the Payment Shares duly and regularly issued to the Vendor from the treasury of the Purchaser; and

(ii) take, and shall cause the Purchaser to take, all necessary steps and proceedings as approved by the Vendor's Solicitors, acting reasonably, to permit the Payment Shares to be duly and validly issued to the Vendor, to have such shares duly and validly issued to the Vendor, to have the issuance of such shares

duly and validly recorded on the books of the Purchaser so that the Vendor is entered on the books of the Purchaser as the holder of the Payment Shares, and to issue the relevant share certificates to the Vendor representing the Payment Shares.

(c) Transfer of the Voting Share

The Vendor shall:

- (i) purchase and subscribe for one Voting Share for the purchase price of One Dollar (\$1.00);
- (ii) execute an Accession Agreement in the form attached as Schedule 1 to the Shareholders Agreement which is required to bind the Vendor to the Shareholder Agreement and the terms and conditions therein; and
- (iii) notify the Purchaser of its director appointee pursuant to the terms of the Shareholder Agreement.

The Purchaser shall:

- (i) deliver to the Vendor, the certificate representing the Voting Share duly and regularly issued to the Vendor from the treasury of the Purchaser; and
- (ii) take, and shall cause the Purchaser to take, all necessary steps and proceedings as approved by the Vendor's Solicitors, acting reasonably, to permit the Voting Share to be duly and validly issued to the Vendor, to have such share duly and validly issued to the Vendor, to have the issuance of such share duly and validly recorded on the books of the Purchaser so that the Vendor is entered on the books of the Purchaser as the holder of the Voting Share, and to issue the relevant share certificates to the Vendor representing the Voting Share.

10.3 Delivery of Closing Documentation

The Parties shall deliver all documentation and other evidence reasonably requested by the other Party in order to establish the due authorization and consummation of the transactions contemplated in this Agreement, including the taking of all corporate proceedings by the boards of directors and shareholders of the Vendor, the Company and the Purchaser, as the case may be, required to effectively carry out their respective obligations pursuant to this Agreement.

10.4 Delivery of Books and Records

The Vendor shall deliver or cause the Company to deliver to the Purchaser all the Company's books and records including, but not limited to, minute and record books, corporate records and documents, corporate seals, books of account, accounting records, past financial statements, Tax Returns, share certificate books and share records, title documents and surveys, Licenses and Permits, and registrations held by the Company, debt instruments, guarantees, Encumbrances, agreements, contracts and commitments to which the Company is a party to or

bound by or subject to, lists of suppliers and customers and all other documents, files, records and other data, financial or otherwise, of the Company which may be in the possession of the Company or of the Vendor.

10.5 Releases

The Vendor shall cause to be executed and delivered to the Purchaser a release by the Vendor, and by each director and officer of the Company and such other Persons as the Purchaser may specify, each such release to be in a form satisfactory to the Purchaser.

10.6 Resignations of Directors and Officers

The Vendor shall cause such directors and officers of the Company as the Purchaser may specify to resign in favour of nominees of the Purchaser, such resignations to be effective at the Closing unless a later time is specified by the Purchaser.

10.7 Vendor's Costs

The Purchaser shall pay to the Vendor the Vendor's Costs by certified cheque or bank draft or other means of immediately available funds.

ARTICLE 11 POST-CLOSING COVENANTS

11.1 Access to Books and Records

For a period of five years following the date hereof or, in the case of tax matters referred to in Section 11.2 for the period commencing as at the date hereof and ending on the date on which the last applicable limitation period under any applicable law expires which is relevant in determining any liability under this Agreement with respect to such particular tax matter, the Purchaser shall, during reasonable business hours and upon at least 48 hours prior notice from the Vendor, provide the Vendor or their representatives with access to any and all of the books and records of the Company existing as of the date hereof, or which affect any calculations, obligations or rights of the Vendor under this Agreement. The Purchaser shall not be responsible or liable to the Vendor for or as a result of any accidental loss or destruction of or damage to the books and records whether caused by the Purchaser or otherwise, except in the case of gross negligence or willful misconduct of the Purchaser or the Company or those persons for whom they are responsible at law; provided that the Purchaser and the Company shall take all usual steps to protect such books and records as a prudent business would take in the circumstances.

11.2 Final Tax Return

(a) The Vendor shall, at the Vendor's expense, prepare or cause to be prepared the Tax Returns of the Company in respect of Taxes for the periods ending as a consequence of the Closing Date (collectively, the "Final Tax Returns"). The Purchaser shall cause the Company to issue and file all such forms and notices as may be required in connection with such Final Tax Returns. To assist the Vendor for these purposes, the Purchaser shall provide to the Vendor and their authorized representatives such reasonable cooperation, assistance and access to relevant

books, records and personnel as may be required for timely and accurate preparation of the Final Tax Returns. Within 120 days after the Closing Date, the Vendor shall provide such returns to the Purchaser for its review, together with any supporting documentation as may be reasonably required by the Purchaser in respect of such review. The Purchaser shall have 30 days thereafter to review the Final Tax Returns. If the Purchaser fails to object to any item or matter in the Final Tax Returns within such 30 days period then the Final Tax Return will be considered determinative of the Tax liability of the Company in respect of the periods covered by the Final Tax Returns. The Purchaser may object within such 30 day period by giving notice to the Vendor setting out in reasonable detail the nature of such objection. The Parties agree to use their best efforts to resolve the dispute within 15 days from the date that the Vendor gives such notice to the Purchaser. If the Purchaser and the Vendor cannot resolve the dispute within such 15 day period, the dispute shall be resolved in favour of the Purchaser for the purpose of enabling the Purchaser to file such Final Tax Returns in a timely manner (as set forth in the last sentence of this Section 11.2(a)), provided that the Final Tax Returns are prepared in accordance with all applicable law, and provided further that, the Vendor may refer the dispute to the Independent Accountant. The Independent Accountant shall, as promptly as practicable (but in any event within 45 days following its appointment), make a determination in respect of the dispute concerning the Final Tax Returns based on submissions of the Purchaser and the Vendor to the Independent Accountant. The decision of the Independent Accountant as to the dispute concerning the Final Tax Returns shall be final and binding upon the Parties. The Purchaser and the Vendor shall each pay one-half of the fees and expenses of the Independent Accountant with respect to the resolution of the dispute. Thereafter, the Purchaser shall, in a timely manner, cause such returns to be executed and filed with the appropriate Governmental Authority and if required, file a Notice of Objection if the Final Tax Return has already been assessed. The Purchaser shall be responsible for any solicitors fees arising from filing a Notice of Objection.

(b) The Vendor shall remit to the Governmental Authority all amounts shown as being a Taxes balance due on the Final Tax Return. For greater certainty, the Vendor shall be responsible for all Taxes accrued by the Company up to and including the Closing Date.

(c) In the event of a reassessment by a Governmental Authority of the Final Tax Returns in respect of Taxes for the periods ending on and before the Closing Date, the Vendor has the right at its sole expense to dispute and contest in the name of the Company, such reassessment. The payment of any reassessment by the Vendor, in respect of Taxes pursuant to this Agreement on behalf of the Company, shall be repaid to the Vendor, if repaid by the taxing authority. The Purchaser shall provide reasonable cooperation with the Vendor and their counsel in all proceedings with respect to any such reassessment.

11.3 Covenants Relating to Title and Tax

The Vendor covenants and agrees that:

(a) If, at any time, any person, other than the Purchaser makes a claim that as of or before the Closing Date: (i) it owned, or had an agreement or option to purchase, any of the Company Shares, or (ii) the Company Shares or any portion of the Company Shares were owned by it and not by the Vendor, then the Vendor shall take all steps and do all actions necessary to eliminate such claim such that the intent and object of this Agreement remains fulfilled.

(b) If, at any time, any Governmental Authority makes a Claim for payment of a Tax liability from the Company owing or accruing up to and including the Closing Date which was not reflected in the Closing Date Financial Statements or the Final Tax Returns, including a misrepresentation made or committed in filing a Tax Return, then the Vendor shall take all steps and do all actions necessary to eliminate such claim, including, if required, the payment of the Tax liability claimed by the Governmental Authority as described above and any and all fines, penalties and interest associated therewith.

11.4 Co-operation

Following the Closing Date, the Parties shall co-operate and provide all reasonable assistance as may be reasonably requested by the Purchaser in order to enable a Party to file any documentation relating to the transaction contemplated herein as may be required by any Governmental Authority.

11.5 Employees

The Purchaser acknowledges that the obligations of the Company to its Employees will not be affected in any way by this Agreement, or by the Closing, and without limiting the generality of the foregoing, the Company shall continue to employ the five (5) existing Company employees after the Closing on their existing or better terms of employment including but not limited to, salary, wages, benefits and location of employment. The Purchaser further acknowledges that the Company will be responsible for any liability or consequences in the event that the Company terminates any Employees or changes the terms of employment for such Employees and, subject to the Vendor's negligence or willful misconduct related to the treatment of the Employees before Closing, the Company will indemnify the Vendor and hold it harmless from such liability or consequences.

11.6 Lease Agreement

Immediately following the Closing Date, the Company, as lessee, shall execute a lease agreement with the Vendor, as lessor, in the form annexed hereto as Schedule 11.6, with respect to the use of 50 Arthur Street, Mitchell, Ontario which it shall maintain as an operations centre for servicing the Company's customers.

11.7 Bill of Sale

Immediately following the Closing Date, the Company shall execute a bill of sale with the Vendor, in the form annexed hereto as Schedule 11.7, wherein the Company agrees to purchase from the Vendor two vehicles and, excluding the property described in Section 11.6 above, any other assets currently rented, leased or otherwise provided by the Vendor to the Company in connection with servicing the Company's customers upon payment of \$42,500.00 and applicable sales taxes.

11.8 Service Quality Indicators

The Company shall use commercially reasonable efforts to ensure that, after Closing, the Company satisfies, and continues to satisfy, the OEB's Service Quality Indicators as attached at

Schedule 11.8, as amended, and the Purchaser shall monitor the Company and commit that the standards set in the OEB's Service Quality Indicators are met.

11.9 Transaction Fees Billed to the Company

Following the Closing Date, the Vendor may invoice the Company for any transaction costs up to \$67,500.00 incurred by the Vendor on behalf of the Company to complete the transactions contemplated in this Agreement, and such amounts will become payable by the Company thereafter.

11.10 Management Contract

The Purchaser acknowledges and agrees that RDI Consulting Inc. will continue to manage and operate the Company until the completion of the transactions contemplated in this Agreement, the discontinuation of negotiations or December 31, 2008, whichever occurs first.

11.11 Repayment of Company Promissory Note

The Parties agree that the Vendor may request repayment of the Company Promissory Note at any time following the Closing Date and the Company will pay to the Vendor the amounts owing thereunder, being [insert amount of note], within ninety (90) days of receipt of the Vendor's written request for repayment. The Parties further agree to amend the Company Promissory Note following the Closing Date to reflect the contents of this provision.

ARTICLE 12 INDEMNITY AND SET-OFF

12.1 Non-Merger

The representations, warranties, covenants and other obligations contained in this agreement and in any Closing Document shall not merge on the Closing, and notwithstanding the Closing or any investigation made by any Party with respect hereto, shall continue in full force and effect.

12.2 Exclusive Remedy

All claims by any Party after Closing in respect of the representations and warranties contained in this Agreement or in any Closing Document shall be subject to the conditions and limitations set forth in this Article 12 and the rights of the set-off and indemnity in this Article 12 shall be the sole and exclusive remedy of any Party in respect of such claims.

12.3 Indemnification by the Vendor

Subject to the limitations in Section 12.5 and 12.6 and the RDI Indemnity Agreement, the Vendor shall indemnify, defend and save harmless the Purchaser and its successors and assigns from and against any and all Loss suffered or incurred by them, as a direct or indirect result of, or arising in connection with or related in any manner whatever to:

(a) any inaccuracy of or any breach by the Vendor of, any representation or warranty of the Vendor contained in this Agreement or in any contract, agreement, instrument, certificate or other document delivered pursuant to this Agreement (except that the Vendor shall not be required to indemnify or save harmless the Purchaser in respect of any inaccuracy or breach of any representation or warranty unless the Purchaser shall have provided notice to the Vendors in accordance with Section 12.7 on or prior to the expiration of the applicable time period related to that representation and warranty set out in Section 12.5);

(b) any breach or non-performance by either of the Vendors of any covenant or other obligation to be performed by it that is contained in this Agreement or in any contract, agreement, instrument, certificate or other document delivered pursuant to this Agreement;

(c) any failure of the Vendor to transfer good and valid title to the Company Shares to the Purchaser, free and clear of all Encumbrances;

(d) all debts or liabilities, contingent or otherwise (including liabilities for Taxes) existing at the Closing Date, required to be but not disclosed in the Closing Date Financial Statements;

(e) all contingent liabilities (including all costs, payments and charges whatsoever relative to any litigation which the Company becomes obligated to pay), existing at the Closing Date, to the extent required to be but not disclosed in the Closing Date Financial Statements; and

(f) subject to Section 11.2, any assessment or re-assessment by any Governmental Authority in respect of any Tax or Taxes (including any Taxes owing pursuant to the Final Tax Returns) owing by the Company that relate to any period or periods ending on or before the Closing Date.

The provisions of Sections 12.6 and 12.7 shall not apply in respect of any inaccuracy or breach of a representation or warranty involving fraud or fraudulent misrepresentation.

12.4 Indemnification by the Purchaser

Subject to the limitations in Sections 12.6 and 12.7, the Purchaser shall indemnify, defend and save harmless the Vendor and its successors and assigns from and against any and all Loss suffered or incurred by them, as a direct or indirect results of, or arising in connection with or related in any manner related to:

(a) any inaccuracy of or any breach by either of the Purchaser and its Subsidiaries, as applicable, of any representation or warranty of the Purchaser contained in this Agreement or in any contract, agreement, instrument, certificate or other document delivered pursuant to this Agreement (except that the Purchaser shall not be required to indemnify or save harmless the Vendor in respect of any inaccuracy or breach of any representation or warranty unless the Vendor shall have provided notice to the Purchaser in accordance with Section 12.7 on or prior to the expiration of the applicable time period related to that representation and warranty set out in Section 12.5); and

(b) any breach or non-performance by either of the Purchaser and its Subsidiaries, as applicable, of any covenant or other obligation to be performed by it that is contained in this Agreement or in any contract, agreement, instrument, certificate or other document delivered pursuant to this Agreement; and

(c) any assessment or re-assessment by any Governmental Authority in respect of any Tax or Taxes owing by the Purchaser or its Subsidiaries that relate to any period or periods ending on or before the Closing Date, subject to section 12.5.

The provisions of Sections 12.5 and 12.6 shall not apply in respect of any inaccuracy or breach of a representation or warranty involving fraud or fraudulent misrepresentation.

12.5 Time Limitations

(a) Subject to Section 12.5(c), the Vendor shall have no liability to the Purchaser for any Loss arising from any Claim described in Section 12.3 unless the Purchaser gives notice to the Vendor specifying in reasonable detail the factual basis of the Claim on or before the second anniversary of the Closing Date.

(b) Subject to Section 12.5(c), the Purchaser shall have no liability to the Vendor for any Loss arising from any Claim described in Section 12.4 unless the Vendor gives notice to the Purchaser specifying in reasonable detail the factual basis of the Claim on or before the second anniversary of the Closing Date.

(c) Despite the provisions of Sections 12.5(a) and 12.5(b), notice with respect to Claims relating to (i) environmental issues may be given on or before the tenth anniversary of the Closing Date, (ii) title of the Vendor to the Company Shares and title of the Company to its property and assets may be given at any time after Closing, (iii) Tax matters may be given at any time after Closing and prior to the 60th day following the last to expire of any time within which an assessment, reassessment or similar document may be issued under any applicable Law; and (iv) Transfer Tax may be given at any time after Closing.

12.6 Limitations on Amount

Notwithstanding any other provision of this Article 12:

(a) no Claim or Claims may be asserted by the Purchaser under Section 12.3 unless the aggregate amount of the Losses of the Purchaser in respect of such Claim or Claims is at least \$10,000, in which event the amount of all such Losses, including such \$10,000 amount, may be asserted; and

(b) no Claim or Claims may be asserted by the Vendor under Section 12.4 unless the aggregate amount of the Losses of the Vendor in respect of such Claim or Claims is at least \$10,000, in which event the amount of all such Losses, including such \$10,000 amount, may be asserted.

12.7 Notice of Third Party Claim

If an Indemnitee receives notice of the commencement or assertion of any Third Party Claim, the Indemnitee shall give the Indemnitor reasonably prompt notice thereof, but in any event no later than 30 days after receipt of such notice of such Third Party Claim. Such notice to the Indemnitor shall describe the Third Party Claim in reasonable detail and shall indicate, if reasonably practicable, the estimated amount of the Loss that has been or may be sustained by the Indemnitee.

12.8 Defence of Third Party Claims

The Indemnitor may participate in or assume the defence of any Third Party Claim by giving notice to that effect to the Indemnitee not later than 30 days after receiving notice of that Third Party Claim (the "Notice Period"). The Indemnitor's right to do so shall be subject to the rights of any insurer or other party who has potential liability in respect of that Third Party Claim. The Indemnitor shall pay all of its own expenses of participating in or assuming such defence. The Indemnitee shall co-operate in good faith and in defence of each Third Party Claim, even if the defence has been assumed by the Indemnitor and may participate in such defence assisted by counsel of its own choice at its own defence. If an Indemnitee has not received notice within the Notice Period that the Indemnitor has elected to assume the defence of such Third Party Claim, the Indemnitee may, at its option, elect to settle or compromise the Third Party Claim or assume such defence, assisted by counsel of its own choosing and the Indemnitor shall be liable for all reasonable costs and expenses paid or incurred in connection therewith any Loss suffered or incurred by the Indemnitee with respect to such Third Party Claim. If the Indemnitor elects to assume the defence of a Third Party Claim under this Section 12.8, the Indemnitor shall not have the right thereafter to contest its liability for such claim.

12.9 Assistance for Third Party Claims

The Indemnitor and the Indemnitee will use all reasonable efforts to make available to the Party, which is undertaking and controlling the defence of any Third Party Claim (the "Defending Party"),

(a) those employees and other persons whose assistance, testimony or presence is necessary to assist the Defending Party in evaluating and defending any Third Party Claim; and

(b) all documents, records and other materials in the possession of such Party reasonably required by the Defending Party for its use in defending any Third Party Claim,

and shall otherwise cooperate with the Defending Party. The Indemnitor shall be responsible for all reasonable expenses associated with making such documents, records and materials available and for all reasonable expenses (excluding salaries) of any employees or other persons made available by the Indemnitee to the Indemnitor hereunder.

12.10 Settlement of Third Party Claims

If an Indemnitor elects to assume the defence of any Third Party Claim as provided in Section 12.8, the Indemnitor shall not be liable for any legal expenses subsequently incurred by

the Indemnitee in connection with the defence of such Third Party Claim following the receipt by the Indemnitee of notice of such assumption. However, if the Indemnitor fails to take reasonable steps necessary to defend diligently such Third Party Claim within 30 days after receiving notice from the Indemnitee that the Indemnitee believes on reasonable grounds that the Indemnitor has failed to take such steps, the Indemnitee may, at its option, elect to assume the defence of and to negotiate, settle or compromise the Third Party Claim assisted by counsel of its own choosing and the Indemnitor shall also be liable for all reasonable costs and expenses paid or incurred in connection therewith. The Indemnitor shall not, without the prior written consent of the Indemnitee, enter into any compromise or settlement of a Third Party Claim, which would lead to liability or create any other obligation, financial or otherwise, on the Indemnitee.

12.11 Direct Claims

Any Direct Claim shall be asserted by giving the Indemnitor reasonably prompt written notice thereof, but in any event not later than 60 days after the Indemnitee becomes aware of such Direct Claim. The Indemnitor shall then have a period of 30 days within which to respond in writing to such Direct Claim. If the Indemnitor does not so respond within such 30 day period, the Indemnitor shall be deemed to have rejected such Claim, and in such event the Indemnitee shall be free to pursue such remedies as may be available to the Indemnitee.

12.12 Failure to Give Timely Notice

Except as described in Section 12.5, a failure to give timely notice as provided in this Article 12 shall not affect the rights or obligations of any Party except and only to the extent that, as a result of such failure, any Party which was entitled to receive such notice was deprived of its right to recover any payment under its applicable insurance coverage or was otherwise directly and materially damaged as a result of such failure.

12.13 Reductions and Subrogation

If the amount of any Loss at any time subsequent to the making of an Indemnity Payment in respect of that Loss is reduced by any recovery, settlement or otherwise under or pursuant to any insurance coverage, or pursuant to any claim, recovery, settlement or payment by or against any other person, the amount of such reduction (less any costs, expenses, including Taxes, or premiums incurred in connection therewith), shall promptly be repaid by the Indemnitee to the Indemnitor. Upon making a full Indemnity Payment, the Indemnitor shall, to the extent of such Indemnity Payment, be subrogated to all rights of the Indemnitee against any third party that is not an Affiliate of the Indemnitee in respect of the Loss to which the Indemnity Payment relates. Until the Indemnitee recovers full payment of its Loss, any and all claims of the Indemnitor against any such third party on account of such Indemnity Payment shall be postponed and subordinated in right of payment to the Indemnitee's rights against such third party. Without limited the generality or effect of any provision hereof, the Indemnitee and Indemnitor shall duly execute upon request all instruments reasonably necessary to evidence and perfect such postponement and subordination.

12.14 Tax Effect

If any Indemnity Payment received by an Indemnitee would constitute taxable income to such Indemnitee, the Indemnitor shall pay to the Indemnitee at the same time and on the same terms, as to interest and otherwise, as the Indemnity Payment an additional amount sufficient to place the Indemnitee in the same after-Tax position as it would have been if the Indemnity Payment have been received tax-free.

12.15 Payment and Interest

All Losses shall bear interest at a rate per annum equal to the Bank of Canada's prime rate, calculated and payable monthly, both before and after judgment, with interest on overdue interest at the same rate, from the date that the Indemnitee disburse funds, suffered damages or losses or incurred a loss, liability or expense in respect of a Loss, to the date of payment by the Indemnitor to the Indemnitee.

12.16 Additional Rules and Procedures

(a) If any Third Party Claim is of a nature such that the Indemnitee is required by Law to make a payment to any person (a "Third Party") with respect to such Third Party Claim before the completion of settlement negotiations or related legal proceedings, the Indemnitee may make such payment and the Indemnitor shall, forthwith after demand by the Indemnitee, reimburse the Indemnitee for any such payment. If the amount of any liability under the Third Party Claim in respect of which such a payment was made, as finally determined, is less than the amount which was paid by the Indemnitor to the Indemnitee, the Indemnitee shall, forthwith after receipt of the difference from the Third Party, pay such difference to the Indemnitor;

(b) The Indemnitee and the Indemnitor shall co-operate fully with each other with respect to Third Party Claims, shall keep each other fully advised with respect thereto (including supplying copies of relevant documentation promptly as it becomes available) and shall each designate a senior officer who will keep himself informed about and be prepared to discuss the Third Party Claim with his counterpart and with counsel at all reasonable times.

ARTICLE 13 **GENERAL**

13.1 Confidentiality and Exclusivity

The confidentiality and exclusivity provisions described in section 12 of the Term Sheet shall continue to apply to each party, and the terms of this Agreement shall be deemed to be confidential information.

13.2 Further Assurances

Each of the Parties agrees, that upon the written request of any other Party, it shall do, execute, acknowledge and deliver, or cause to be done, executed, acknowledged and delivered, all such further acts, deeds, documents, assignments, transfers, conveyances, powers of attorney and assurances as may be reasonably necessary or desirable to effect complete consummation of the transactions herein contemplated.

13.3 Notices

Any notice, direction or other instrument required or permitted to be given to any Party hereunder shall be in writing and shall be sufficiently given if delivered personally, or if sent by registered prepaid mail, or if transmitted by facsimile or other form of electronic communication during the transmission of which no indication of failure of receipt is communicated to the sender:

In case of the Vendor:

The Municipality of West Perth
169 St. David Street
P.O. Box 609
Mitchell, Ontario
N0K 1N0

Attention: Will Jaques,
Chief Administrative Officer
Facsimile: (519) 348-8935

with a copy to the Vendor's Solicitors:

Borden Ladner Gervais LLP
Scotia Plaza
40 King Street West
Toronto, Ontario
M5H 3Y4

Attention: Mark Rodger
Facsimile: (416) 361-7088

In case of the Purchaser:

ERTH Corporation
143 Bell Street
Ingersoll, ON N5C 3K5
Attention: Mr. Jeff Pettit, President and CEO
Facsimile: (519) 518-6120

Any such notice, direction or other instrument, if delivered personally, shall be deemed to have been given and received on the day on which it was delivered, provided that if such day is not a Business Day then the notice, direction or other instrument shall be deemed to have been given and received on the first Business Day next following such day; if mailed, shall be deemed to have been given and received on the fourth day after it was mailed, in respect of mail delivered within Canada, or on the sixth day after it was mailed, in respect of mail delivered outside of Canada, provided that if such day is not a Business Day then the notice, direction or other instrument shall be deemed to have been given and received on the first Business Day next

following such day; and if transmitted by fax or other form of electronic communication, shall be deemed to have been given and received on the day of its transmission if received by 4 p.m. EST, provided that if such day is not a Business Day or if it is transmitted or received after the end of normal business hours then the notice, direction or other instrument shall be deemed to have been given and received on the first Business Day next following the day of such transmission.

Any Party may change its address for service from time to time by giving notice to each of the other Parties in accordance with the foregoing provisions.

13.4 Time of the Essence

Time shall be of the essence of this Agreement.

13.5 Expenses

Except as contemplated by or disclosed in this Agreement, all costs and expenses (including, without limitation, the fees and disbursements of legal counsel) incurred in connection with this Agreement and the transactions herein contemplated shall be paid by the Party incurring such costs and expenses.

13.6 Applicable Law

This Agreement shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws of the Province of Ontario and the laws of Canada applicable therein, and shall be treated, in all respects, as an Ontario contract.

13.7 Entire Agreement

This Agreement, including the Schedules hereto, constitute the entire agreement between the Parties with respect to the transactions herein contemplated, and supersede all prior understandings, agreements, negotiations and discussions between the Parties with respect thereto except as specifically provided or contemplated in this Agreement or in any agreement, certificate, affidavit or other document delivered or given pursuant to this Agreement. There are no representations, warranties, terms, conditions, undertakings or collateral agreements or understandings, express or implied, between the Parties other than those expressly set forth in this Agreement or in any such agreement, certificate, affidavit, or other document as aforesaid. This Agreement may not be amended or modified in any respect except by written instrument executed by each of the Parties.

13.8 Effect of Closing

Any provision of this Agreement which is capable of being performed after but which has not been performed at the Closing, and all obligations, covenants and agreements contained in this Agreement or in any agreement, certificate, affidavit, or other document delivered or given pursuant to this Agreement, including, without limitation, the indemnities herein provided for, shall remain in full force and effect notwithstanding the Closing subject to the limitation periods contained herein.

13.9 Counterparts

This Agreement and the Schedules hereto may be executed by the Parties in separate counterparts; each of which when so executed and delivered shall be an original and all such counterparts shall together constitute one and the same Agreement. This Agreement and the Schedules hereto may be executed by facsimile signature.

13.10 Assignment

Neither this Agreement nor any rights or obligations hereunder shall be assignable by any Party without the prior written consent of all of the other Parties.

13.11 Successors and Assigns

This Agreement shall enure to the benefit of and be binding upon the Parties and their respective heirs, executors, administrators, successors including any successor by reason of the amalgamation or merger of any Party.

13.12 Severability of Provisions

Any provision in this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

- Signature Page Follows -

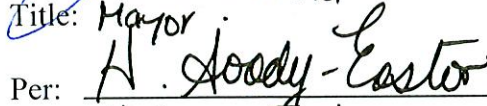
IN WITNESS WHEREOF the Parties have duly executed this Agreement as of the date and year first above written.

THE MUNICIPALITY OF WEST PERTH

Per:  _____

Name: John VanBakel

Title: Mayor

Per:  _____

Name: H. Soady-Easton


Title: Clerk

ERTH POWER CORPORATION

Per:  _____

Name: JEFF BROWN

Title: ATTORNEY

Per:  _____

Name: JEFF PETTIT

Title: PRESIDENT + CEO

Schedule 1.1.10
Company Promissory Note

Schedule 1.1.23(a)
Financial Statements (Company)

Schedule 1.1.23(b)
Financial Statements (Purchaser)

Schedule 1.1.40
Payment Share Attributes

Schedule 1.1.46
RDI Indemnity Agreement

Schedule 1.1.47
ERTH Shareholder Agreement

Schedule 1.1.49
ERTH Corporate Chart

Schedule 1.1.60

Voting Share Attributes

- (1) Subject to the Ontario Business Corporation Act, the rights privileges, restrictions and conditions attaching to Class A Voting Shares are as follows:
- (a) **Voting Rights:** The holders of the Class A Voting Shares shall be entitled to receive notice and to attend any meeting of the shareholders of the Corporation, except meetings at which only holders of a specified class of shares are entitled to vote, and at all such meetings shall be entitled to one (1) vote for each share held.
 - (b) **Payment of Dividends:** The holders of the Class A Voting Shares shall not be entitled to receive any dividends declared by the directors of the Corporation.
 - (c) **Participation upon Liquidation, Dissolution or Winding-Up:** The holders of the Class A Voting Shares shall not have the right to receive any remaining property or assets of the Corporation in the event of the dissolution, liquidation or winding-up of the Corporation, whether voluntary or involuntary, or any other distribution of assets of the Corporation among its shareholders for the purpose of winding-up its affairs.

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