

LEASE

THIS LEASE made as of the 15th day of January, 2016.

BETWEEN:

THE CORPORATION OF THE
TOWNSHIP OF MUSKOKA LAKES,
(herein called the "**Landlord**")

OF THE FIRST PART

- and -

SWIFT RIVER ENERGY LIMITED,
(herein called the "**Tenant**")

OF THE SECOND PART

WHEREAS the Landlord is the owner of a freehold or leasehold interest in certain lands in the Township of Muskoka Lakes, in the Province of Ontario, as more particularly described in Schedule "A";

AND WHEREAS the Tenant wishes to have use of the Premises (as hereinafter defined) in conjunction with the development and construction of the North Bala Falls Small Hydro Project (the "**Project**")

AND WHEREAS by a letter dated the 14th day of April, 2015 (herein called the "**Offer to Lease**") the Tenant offered to lease the said Premises from the Landlord upon and subject to the provisions and conditions herein and therein set forth;

WITNESS

1. Premises

That in consideration of the rents, covenants and agreements hereinafter reserved and contained on the part of the Tenant to be paid, observed and performed, the Landlord leases unto the Tenant the Lands (including all of the privileges, rights-of-way, easements and other rights of any nature appurtenant thereto) described in Schedule "A" attached hereto (the "**Premises**").

2. **Term**

TO HAVE AND TO HOLD THE Lands subject as herein provided unto the Tenant for and during the initial term of this Lease being Thirty Six calendar months immediately following the Commencement Date as defined herein, provided that:

- (a) In the event that the Access Date as defined herein takes place earlier than the first day of the thirteenth calendar month immediately following the Commencement Date, then the initial term of this Lease shall be shortened to be a term of Twenty Four calendar months immediately following the Access Date;
- (b) In the event that the Commercial Operation Date (as published by the Independent Electricity System Operation) for the Project is not achieved by the end of the initial term of this Lease, the said term may be extended on a month to month basis to the end of the month in which the said Commercial Operation Date is achieved, provided, however, that the term shall not be extended beyond November 1, 2035, without the Landlord's prior written authorization;
- (c) The Tenant shall have the right to terminate this Lease at any time upon not less than 30 days prior written notice to the Landlord provided such termination shall not occur until the last day of a calendar month;
- (d) "**Commencement Date**" shall mean that date which is the latest to occur of the following:
 - (i) February 1, 2016; or
 - (ii) the date on which a building permit has been issued and a By-Law is passed by Council of the Landlord in final and binding form providing for amending, or exempting, the Premises from any Township by-laws in full force and effect at the time of the execution of this Lease, including Heritage Conservation District Bylaw 2014-131, Heritage Designation Bylaw 2013-52, as well as any other applicable Township by-laws that restrict the Tenant from carrying out its survey and investigations on the Premises, as permitted under subparagraph 4(a) of this Lease;

and

- (e) "**Access Date**" shall mean that date which is the earliest to occur of the following:
 - (i) April 1, 2016, or
 - (ii) that date which is the earliest to occur after the Commencement Date of the following:
 - A. the date on which the excavation on the site for the foundation of the Project is commenced;
 - B. the date on which any tree on the Premises is cut down except as permitted under subparagraph 4(a) of this Lease; or

- C. the date on which equipment and/or material is installed or assembled on the Premises except as permitted under subparagraph 4(a) of this Lease;

3. Rent

YIELDING AND PAYING THEREFOR unto the Landlord in lawful money of Canada, the rent consisting of:

- (a) A onetime payment of One Hundred and Twenty Five Thousand (\$125,000.00) Dollars on or before the Access Date for the initial term of this Lease; provided it is acknowledged and agreed that such onetime payment is not to be refunded or adjusted in the event that the initial term of this Lease is shortened under subparagraph 2(a) of this Lease or the Tenant exercises its right to terminate the Lease under subparagraph 2(c) of this Lease;
- (b) The sum of Five Thousand Two Hundred (\$5,200.00) for each calendar month that the term of this Lease is extended beyond the first full calendar month immediately following the end of the initial term of this Lease as set out in subparagraph 2(b) of this Lease other than such extensions caused by Delay as described in subparagraph 16(a) of this Lease; and
- (c) The sum of Five Thousand (\$5,000.00) on October 1 in each calendar year during the initial term of this Lease and any extension thereof, in the event that the Tenant uses that part of the Premises designated Parcel 2 (the Shield Parking Lot) during the Bala Cranberry Festival.

4. Limited and Additional Access

The Tenant shall have the following Access to the Premises without payment of rent or other compensation to the Landlord:

- (a) During the period from the date of this Lease until the Access Date, the Tenant shall only be permitted to access the Premises upon not less than 24 hours' notice to the Township for a maximum of Ten (10) days and only for purposes of investigations and surveys including geotechnical investigations required in the production of the engineering drawings, surveys, construction documents, reports, etc. and will not be considered to be "construction" activities. These initial investigations will not include any removal of trees with a diameter greater than 1 inch and will not result in alteration to the Premises or removal of vegetation other than the minimum reasonably necessarily required to establish site lines for such surveys and for such geotechnical investigations and as otherwise permitted under this Lease; it being understood and agreed that prior to the Access Date the Tenant shall not otherwise have access to, or carry out any other activity on, the Premises except as expressly set out in this Section 4(a) and the public's access to the Premises shall not be interrupted except to the express extent set out in this subparagraph 4(a); and
- (b) After the end of the term of this Lease whether extended or terminated, the Tenant shall be permitted to conduct the restoration/improvement of the Premises as set out in this Lease.

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5. Use

The Premises will only be used in connection with the Project and as follows:

- (a) Parcel 1 will be used for the following:
 - (i) Project site access including construction of a new temporary road and driveway entrance off District Road 169 at approximately the south end of Parcel 1 down to the site of the Project;
 - (ii) Storage of construction materials and/or equipment;
 - (iii) Installation of a tower crane likely at north end of Parcel 1; and
 - (iv) These activities would require tree removal and earthworks/regrading throughout Parcel 1 but would be mainly concentrated away from the water's edge;

- (b) Parcels 2 and 3 will be used for the following:
 - (i) Storage and staging of construction trailers, equipment (including any equipment typically found on a construction site) and construction materials;
 - (ii) Storage of sedimentation tanks will be located on Parcel 2 only. These tanks will hold water pumped from the excavation site(s) to allow sediment to settle out before the water is returned to the river;
 - (iii) These activities will require security fencing of the areas to be used;
 - (iv) The Tenant's use of Parcels 2 and 3 will not block or unreasonably impede either the adjacent parking areas from public use or public access to the "south falls" across Parcel 2 including without limitation a pedestrian walkway having a minimum width of Three (3) feet to access the said falls;
 - (v) Notwithstanding the foregoing and due to high volume use during tourist season of that portion of the Premises known as the Portage Landing Lot and described as Parcel 3, during the period from April 30 until the first Monday after the Bala Cranberry Festival in each calendar year in the term of this Lease and any extension thereof, the Tenant shall have no right to use the said Parcel 3, which will be returned to the Landlord in a condition suitable for its continued use as a parking lot, unfenced, and made available for free and unrestricted use by the Landlord during that period;

- (c) The construction work intended for the Project will require dewatering of excavation sites and in-water construction areas. This work will therefore require the use of pumps (with engine or motor) throughout the day and night and therefore violate the Noise Bylaw for Construction Noise outside of the prohibited periods of time i.e. between 21:00 to 06:00 Sunday to Friday and between 21:00 and 09:00 Saturday

6. Restoration

At the end of the term of this Lease whether renewed or terminated, the Tenant at its expense, shall forthwith commence and diligently carry out the following restoration/improvement of the Premises:

- (a) Parcel 1 will be restored/improved as follows:
 - (i) At the option of the Landlord, either (A) Parcel 1 will be restored to a condition similar to the existing condition at the date of this Lease i.e. the temporary access road and all fill material will be removed [The main difference in condition would be that the new trees will be shorter and there will be a view of the new retaining wall for the proposed District Road 169 shoulder widening at the east end]; or (B) the land will be re-graded to improve public access creating a public parkette including walking paths and/or stairs down to the water's edge with tiered landscaping [this will allow a better camouflaging of the new retaining wall for the proposed District Road 169 shoulder widening at the east end]; such option to be exercised by the Landlord in writing delivered to the Tenant within 60 days of receipt by the Landlord of detailed landscaped plans for Option B which plans were developed with prior consultation with the Landlord's staff and the Landlord's heritage consultant and failing which the Landlord shall be deemed to have elected Option A;
 - (ii) New plantings would include native, landscape quality trees, grasses and shrubbery;
 - (iii) The restoration/improvement will be designed so as to meet the historical attributes site as outlined in the heritage designation document;
 - (iv) The restoration/improvement will be reviewed and approved by the Council of the Landlord prior to finalizing, or as determined by Council of the Landlord acting reasonably and without delay;
 - (v) The restoration/improvement will be completed within 12 months of the said end of the term of this Lease; and
 - (vi) The restoration/improvement will respect the requirement of the environmental assessment of the Project with respect to erosion protection.
- (b) Parcels 2 and 3 will be restored as follows:
 - (i) Any disturbances, including fencing, holes from fence posts, potholes in the gravel surface etc. would be removed and/or repaired to meet current conditions at the end of construction. This may include re-grading of the gravel surface, if deemed required.
- (c) The Tenant will pay for all such rehabilitation, restoration and improvements including design, materials and construction.
- (d) The Tenant shall provide the Landlord with the usual and normal warranties in regard to such rehabilitation, restoration and improvements for a period of two years following completion thereof.

- (e) The Tenant shall provide the Landlord on or before the Access Date with financial security by way of letter of credit in the Landlord's standard form to be held by the Landlord as security for the Tenant's obligations to complete such rehabilitation, restoration and improvements and to be released by the Landlord on completion thereof, with the final amount to be amount established between the Landlord and the Tenant acting reasonably, but in no case shall the financial security be less than \$100,000.00.

7. Ownership of Improvements

Title to and ownership of all improvements now or hereafter placed, situate, constructed or attached, by the Tenant on the Premises shall (notwithstanding any rule or law to the contrary) be vested in the Tenant until the expiration or earlier termination of this Lease.

8. Tenant's Covenants

The Tenant covenants and agrees with the Landlord:

(a) Rent

- (i) to pay the rent when due; and
- (ii) that all rent in arrears shall bear interest at the Prime Rate per annum of the Canadian Imperial Bank of Commerce as declared by the Canadian Imperial Bank of Commerce from time to time for Canadian dollar loans made in Canada to prime commercial borrowers and adjusted automatically upon change by the Canadian Imperial Bank of Commerce without notice to the Tenant, plus two percentage points (herein called the "**Applicable Rate**");

(b) Taxes

- (i) to pay when due all taxes, including local improvement rates, assessments and other charges, rates, duties, licence fees or levies of every nature whatsoever which may be made, levied or imposed on the Premises by any governmental authority having jurisdiction, or upon the Landlord or Tenant on account thereof and all taxes and rates in substitution therefor (herein called "Property Taxes") provided, however, that nothing contained in this Lease will obligate the Tenant to pay any franchise, corporate, estate, inheritance, succession, net income, excess profits, capital levy, speculation or transfer tax or any rates, assessments or charges levied, assessed or charged against or with respect to the income, capital or corporation taxes payable by the Landlord or with respect to any other tax or impost of a personal nature charged to or levied upon the Landlord unless the same are in substitution for Property Taxes; Provided it is acknowledged and agreed that currently, and in the future, the Premises are exempt from payment of any such taxes, including local improvement rates, assessments and other charges, rates, duties, licence fees or levies; and
- (ii) The Tenant shall pay to the Landlord amounts equal to any goods and services taxes, sales taxes, value added taxes or any other taxes imposed on the Landlord with respect to rent or other sums payable by the Tenant to the Landlord under this Lease, whether characterized as a goods and services tax, sales tax, value added tax or otherwise, payable from time to time, it being the intention of the parties that the

Landlord shall be fully reimbursed by the Tenant with respect to any and all such taxes payable by or required to be collected by the Landlord; the amount of such taxes so payable by the Tenant shall be calculated by the Landlord in accordance with the applicable legislation and shall be paid to the Landlord at the same time as the amounts to which such taxes apply are payable to the Landlord under the terms of this Lease or upon demand at such other time or times as the Landlord from time to time determines.

(c) **Compliance with Statutes, etc.**

To comply with and conform to the requirements of every applicable statute, law, by-law, regulation, requirement and order of any government having jurisdiction from time to time or at any time in force affecting the removal of any unauthorized encroachment from or the condition, maintenance, use or occupation of the Premises; provided that a minor, inadvertent infraction of the foregoing shall be deemed not to be a breach of this subparagraph.

(d) **Maintenance and Repairs**

To keep, operate and maintain the Premises at all times in good order and condition as would a careful owner of property similar in size, quality, construction and age to the Premises (reasonable wear and tear excepted); provided that this shall not require the Tenant to repair, reconstruct or replace any part of the Premises merely because of age or obsolescence.

(e) **Lawful Use**

Not to suffer any waste or injury to the Premises or any part thereof other than as herein permitted or required or as is permitted or required in the Offer to Lease, and not to use or occupy or permit to be used or occupied the Premises or any part thereof for any illegal or unlawful purpose.

(f) **Insurance**

The Tenant shall be financially responsible for, maintain at all times during the term of this Lease

- (i) Commercial General Liability insurance for a limit that shall be no less than \$5,000,000 per occurrence. Coverage shall include but not limited to bodily injury including death, personal injury, property damage include loss of use thereof, tenants legal liability, premises and operations liability, contractual liability, contingent employers liability, non-owned automobile and shall contain a cross liability, severability of insured clause. The Landlord shall be named as an additional insured.
- (ii) "All Risk" property insurance for all property in the care, custody and control of the Tenant for the full replacement cost with the usual standard, extended and supplemental coverage. Coverage shall also include business interruption insurance for no less than 12 months. The policy shall contain a waiver of subrogation in favour of the Landlord.

- (iii) Boiler & Machinery Insurance for all temporary boilers and pressure vessels and other insurable objects forming part of the work for the full replacement cost with the usual standard, extended and supplemental coverage.
- (iv) The Tenant shall take out or cause to take out Environmental Liability Insurance or Contractor's Pollution Liability Insurance for a limit that shall be no less than \$2,000,000 per claim. Coverage shall include but not limited to bodily injury including death, property damage and remediation costs which are reasonable and necessary to investigate, neutralize, remove, remediate (including associated monitoring) or dispose of soil, surface water, groundwater or other contamination. The policy shall remain in force for twelve (12) months following completion of work. The Landlord shall be named as an additional insured.
- (v) Where applicable and based upon the operations of the Tenant, Section (f) Insurance shall apply in the same manner to any contractor, sub-contractor or agent as it would to the Tenant. Further, it is the Tenant's obligation to ensure that any contractor, sub-contractor or agent is aware of these obligations. The Tenant shall provide to the Landlord confirmation of the contractors, sub-contractor or agent's insurance.
- (vi) As reasonably determined by Landlord the Tenant may be required to provide and maintain additional insurance limits or coverage(s), which are related to this Lease.
- (vii) All applicable deductibles are at the sole expense of the Tenant or any contractors, sub-contractors or agents performing any work on behalf of the Tenant. In addition all policies shall apply as primary and not as excess of any insurance available to the Landlord.

(viii) Insurance Companies

All contracts of insurance required to be maintained under the provisions of this Lease shall be with a company or companies licenced under the laws of the Province of Ontario and approved by the Landlord (such approval not to be unreasonably withheld or delayed) and ordinarily engaged in the business of insuring against the risks herein described. The Landlord shall give notice of any objection to such company or companies within 10 days after receipt of notice of the name or names thereof from the Tenant and, failing such objection thereto, such company or companies shall be deemed to have been approved by the Landlord.

(ix) Proceeds of Insurance

The proceeds of all insurance referred to in subparagraph 5(f)(i) of this Lease, other than public liability and third party property damage insurance and rent or income insurance, shall be payable in the name of the Tenant and/or each leasehold mortgagee of the Tenant's leasehold interest.

(x) Landlord May Insure

If the Tenant fails to obtain the required policies of insurance the Landlord may (but shall not be obliged to) obtain such policies and shall give the Tenant notice setting out with reasonable particularity the default remedied and the amount and dates of payment of all premiums and other costs incurred by the Landlord in connection therewith to the date of such notice. The Tenant, within 15 days after the giving of such notice, shall pay the same to the Landlord with interest at the Applicable Rate to the date of payment thereof by the Tenant to the Landlord, failing which payment the amount thereof together with interest as aforesaid shall be recoverable by the Landlord as if the same were, and in the same manner as, rent reserved and in arrears under this Lease.

(xi) Certification of Insurance

A minimum of ten business days prior to the execution of the Lease and upon the placement, renewal, amendment, or extension of all or any part of the insurance, the Tenant shall promptly provide the Landlord with confirmation of coverage and, if required, a certified true copy(s) of the policy(s) certified by an authorized representative of the insurer together with copies of any amending endorsements applicable to the Lease

(g) **Changes and Alterations**

Except as herein provided, not to make or permit to be made any alteration, addition, change or improvement to the Premises at any time which would materially negatively affect the Premises without first obtaining the prior written consent of the Landlord which consent shall not be unreasonably withheld or delayed. Before requesting the Landlord's consent as required by this subparagraph, the Tenant shall submit to the Landlord detailed plans and specifications in duplicate of such proposed change (one of which copies may be retained by the Landlord). Such change shall meet the applicable requirements of municipal, provincial and federal governments or other authorities and of the fire insurance underwriters, provided that a minor, inadvertent infraction of such requirements shall be deemed not to be a breach of this subparagraph.

(h) **Inspection**

To permit the Landlord at all reasonable times and on reasonable prior notice to the Tenant, to enter and view the state of repair of the Premises in the company of a representative of the Tenant.

(i) **Surrender**

At the expiry of the term hereof, or other sooner termination hereof, to quit the Premises and surrender, yield and deliver up the Premises in as good repair, order and condition as required under the provisions of subparagraph 4(b) of this Lease, subject to the provisions of

paragraph 6 of this lease, whereupon all right, title and interest therein of the Tenant and, except as otherwise provided herein, all obligations of the Tenant with respect thereto, shall cease and vest in the Landlord.

(j) **Nuisance**

Not to do or omit or permit to be done or omitted upon the Premises anything which shall be or result in a nuisance. The Landlord hereby acknowledges and agrees that the use of the Premises in accordance with the terms hereof and with the terms of all subleases and other agreements affecting the Premises shall be deemed not to be or result in a nuisance.

(k) **Construction Liens**

Throughout the term of this Lease and at its own cost and expense, to cause any and all statutory liens, construction liens and other liens for labour, services or materials which may be registered against the Premises as a result of the use of the Premises by the Tenant, to be discharged or vacated from title to the Premises, at the Tenant's option, within 30 days after the Tenant has notice that a claim for lien has been registered or after the Landlord shall give the Tenant written notice of the registration of any claim for such lien, whichever shall be the earliest; and the Tenant shall be entitled to defend against any claim for any such lien in any proceedings brought in respect thereof after first paying into the appropriate Court the amount claimed and such costs as the Court may direct or providing such other security with respect to such claim as the Court or the Landlord, acting reasonably, may in writing approve.

(l) **Assignment, etc.**

Not to assign, transfer, enter into a Leasehold Mortgage (as defined in subparagraph 11(a) of this Lease) or otherwise encumber this Lease or its interest in the Premises or any part thereof or sublease the whole or substantially the whole of the Premises under one sublease to one subtenant or to a related group of subtenants unless the following provisions shall have been complied with:

- (i) there is not existing any material default hereunder on the part of the Tenant;
- (ii) the Landlord shall be given written notice of the making of such assignment, transfer, Leasehold Mortgage, encumbrance or sublease and the effective date thereof within 10 days after the execution and delivery thereof;
- (iii) a duplicate original of such assignment, transfer, Leasehold Mortgage, encumbrance or sublease shall be given to the Landlord within 10 days after the execution and delivery thereof;
- (iv) the assignee or transferee (excluding a leasehold mortgagee) has assumed in writing in favour of the Landlord the due and punctual performance of the agreements, provisions, covenants and conditions of this Lease on the Tenant's part to be performed and observed from and after the effective date of such assignment or transfer; and in the case of such a sublease (excluding a Leasehold Mortgage) an agreement in writing by the sublessee in favour of the Landlord to be bound by the provisions of this Lease insofar as the same are applicable to the sublessee and

sublease; and in each case a duplicate original of such assumption agreement shall be given to the Landlord within 10 days after the execution and delivery of the assignment, transfer or sublease;

- (v) the Project adjacent to the Premises has been transferred, assigned, leased, mortgaged or encumbered to the person, firm or corporation to whom this Lease has been assigned, transferred, so subleased, mortgaged or encumbered, as the case may be;
- (vi) It shall be a condition thereof that every leasehold mortgagee, to the extent and for so long as such leasehold mortgagee has ownership or possession of the Premises, and every other assignee including any assignee of such leasehold mortgagee to whom such leasehold mortgagee shall assign this Lease in accordance with the foregoing, shall expressly assume the Tenant's obligations under this Lease. Any leasehold mortgagee shall be liable to perform such obligations imposed on the Tenant under this Lease only so long as the leasehold mortgagee has ownership or possession of the Premises; and
- (vii) no surrender of this Lease by the Tenant shall be valid unless consented to in writing by each leasehold mortgagee and accepted in writing by the Landlord.

(m) **Subleases**

The Tenant may at any time and from time to time sublease part or parts of, but not the whole of, the Premises without the consent or approval of the Landlord, provided that no such sublease shall be for a term which (taking into account any renewals and extensions) shall extend beyond the expiration of the term of this Lease.

(n) **Utility Charges**

To pay promptly all charges or costs for water, electricity and other utilities of every nature and kind and all similar charges charged against the Tenant, non-payment of which would create a lien or charge against the Premises.

(o) **Tenant's Indemnity**

Subject to the provisions of this subparagraph, to indemnify and save harmless the Landlord against and from all liabilities, obligations, damages, penalties, claims, costs (including reasonable solicitors' fees), fines, suits, demands, actions and causes of action (herein collectively called the "Claims") which may be imposed upon, incurred by or asserted against the Landlord by reason of or arising in any way in connection with any breach, violation or non-performance by the Tenant of any covenant, term or provision of this Lease or the use and/or occupation of the Premises by the Tenant or its servants, agents, employees, subtenants or assignees during the term of this Lease, or with respect to any damage to the property of the Tenant or any subtenant or damage to any other property and injury to or death of any person occurring in or about the Premises. In case any action or proceeding is brought against the Landlord by reason of any Claims, the Tenant, upon written notice from the Landlord, will at the Tenant's expense resist or defend such Claims. ~~Nothing herein contained shall obligate or require the Tenant to indemnify or save the~~ Landlord harmless from any such Claims to the extent that such Claims are incurred by or

assessed against the Landlord by reason of or arising in connection with the negligence or other tort or unlawful act of the Landlord or as a result of any act or omission contrary to the provisions of this Lease by the Landlord, its servants, agents, employees or assignees.

(p) **Margaret Burgess Park**

During the term of this Lease and any extension thereof, the Tenant shall (a) not use Margaret Burgess Park for construction purposes or alter it in any way; (b) maintain the current public access, to Margaret Burgess Park; and (c) Margaret Burgess Park will continue to be used by the Landlord and the Tenant for access to the Bala North Dam for the purposes of operations and maintenance throughout the construction period.

It is agreed between the parties that, at the Landlord's expense, the foregoing covenants are to be incorporated into an agreement amongst the Landlord, the Tenant and the Ministry of Natural Resources and Forestry and/or the owner of Margaret Burgess Park.

(q) **North Bala Falls Small Hydro Project**

The Tenant covenants that the powerhouse design for the Project will include the following design attributes:

- (i) the building size will be minimized as much as possible, while maintaining operability of the facility;
- (ii) a lookout(s) would be incorporated into the building, accessible by the public from Parcel 1;
- (iii) interpretive signage will be placed on or around the building;
- (iv) the landscaping between Parcel 1 and the Project site will be made to "blend together";
- (v) the south wall will be finished to match the other walls; and
- (vi) the building will be designed to "fit into" the community from an architectural design and heritage perspective".

(r) **Landlord's Costs**

The Tenant shall pay to the Landlord (i) up to a maximum of \$10,000 towards the legal costs incurred by the Landlord in regard to this lease, and (ii) up to a maximum of \$4,000 towards the costs incurred by the Landlord for a heritage consultant in regard to this Lease.

9. Fixtures

On the termination of this Lease, whether by expiration of the term or otherwise, the Tenant shall remove and permit the removal of the tenant and trade fixtures and equipment of the Tenant and its subtenants and licensees and all persons claiming through or under them, or any of them, provided that the Tenant shall compensate the Landlord for any damages resulting from the installation or removal of such tenant and trade fixtures and equipment except for reasonable wear and tear.

10. Distress

All the Tenant's goods, chattels and property from time to time on the Premises shall be subject to distress for rent, and the Tenant hereby irrevocably waives and renounces the benefit of any present or future legislation taking away or diminishing the Landlord's right of distress.

11. Landlord's Covenants

The Landlord covenants and agrees with the Tenant:

- (a) for quiet enjoyment by the Tenant of the Premises subject to performance by the Tenant of all its obligations under this Lease;
- (b) that no mortgages, encumbrances, liens or other adverse title claims will be registered against or otherwise affect title to the Premises in priority to the Tenant's interest under this Lease; and
- (c) that it will immediately upon execution of this Lease arrange for its Council to pass By-Laws providing for each of the following during the term of this Lease and all extensions thereof:
 - (i) Amending, or exempting the Premises from, any Township bylaws that will restrict the Tenant's ability to use the Premises for the uses set out in this Lease, including without limitation an exemption from the Tree Preservation Bylaw 2008-55, Heritage Conservation District Bylaw 2014-131, Noise Bylaw: 2005-83 for de-watering purposes, Site Alteration Bylaw 2008-56 and Heritage Designation Bylaw 2013-52;
 - (ii) Enacting no parking restrictions on the north side of Bala Falls Road between Purk's Place / CP Rail lands and District Road 169; and
 - (iii) Exempting the Premises from the payment of all taxes, including local improvement rates, assessments and other charges, rates, duties, licence fees or levies of every nature whatsoever during the term of this Lease and all extensions thereof.

12. Waiver

Any condoning, excusing or overlooking by the Landlord of any default, breach or non-observance by the Tenant at any time or times with respect to any covenant, agreement, provision or condition herein contained shall not operate as a waiver of the Landlord's rights hereunder with respect to any continuing or subsequent default, breach or non-observance, nor so as to defeat or affect in any way the rights of the Landlord hereunder with respect to any such continuing or subsequent default, breach or non-observance, and all rights and remedies herein contained of the Landlord shall be deemed to be cumulative and not alternative.

13. Assignment by Landlord

The Landlord may at any time and from time to time when it is not in default hereunder assign or transfer the whole or any part of its reversionary interest in the Premises and its right, title and interest in this Lease, subject always to the terms and conditions of this Lease and the rights of the

Tenant and any leasehold mortgagees hereunder. Any such assignment or transfer shall not be effective until the assignee or transferee thereunder has assumed in writing directly with the Tenant the due and punctual payment and performance of the Landlord's covenants to be paid and performed under this Lease, such that the assignee or transferee has the same rights and obligations with respect to the Premises as has the Landlord hereunder. Upon the entering into of such assumption agreement by the assignee or transferee and upon the Landlord having complied with the other terms and conditions of this Lease with respect to such assignment, and provided that the Landlord has assigned or transferred all of its reversionary interest in the Premises and all of its right, title and interest in this Lease to such assignee or transferee, the Landlord shall be released from any further obligations hereunder arising thereafter.

14. Mortgages of Tenant's Interest

- (a) Notwithstanding anything to the contrary contained in any other part of this Lease (including, without limitation, the provisions of paragraph 5 of this Lease) the Tenant shall have the right at any time and from time to time to mortgage and charge this Lease and the leasehold interest of the Tenant in the Premises (any such mortgage or charge, including a deed of trust or mortgage securing bonds or debentures, being herein called a "Leasehold Mortgage"), and to extend, modify, renew or replace any such Leasehold Mortgage or assignments, in each and every such case, without the consent of the Landlord.
- (b) Each and every leasehold mortgagee shall give written notice to the Landlord with respect to its Leasehold Mortgage (accompanied by a copy of such Leasehold Mortgage) within fifteen (15) days after the execution and delivery thereof. No notice, demand, election or other communication required or permitted to be given under this Lease (each of the foregoing being hereinafter referred to as a "Notice") which is given by the Landlord to the Tenant shall be binding upon or affect any leasehold mortgagee who has given the Landlord notice of its Leasehold Mortgage in accordance with the provisions of this paragraph unless a copy of such Notice has been given to the leasehold mortgagee within the time when such Notice is required or permitted to be given to the Tenant. All copies of Notices to be given to any leasehold mortgagee as provided by this paragraph shall be given in the same manner as is provided in this Lease in respect of Notices given by the Landlord to the Tenant.
- (c) In the event that the Tenant enters into a Leasehold Mortgage by way of assignment or sublease of this Lease, then unless and until the leasehold mortgagee shall have delivered a written notice (specifically identified as a notice under subparagraph 11(c) of this Lease) to the Landlord of its assumption of the Tenant's rights and obligations under the assignment or sublease of this Lease, the leasehold mortgagee shall not be liable for any of the Tenant's covenants in this Lease, provided that a leasehold mortgagee shall be liable to perform the Tenant's covenants in this Lease during the time the leasehold mortgagee has ownership or possession of the Premises and provided further that upon a sale, assignment, conveyance or other transfer of this Lease by the leasehold mortgagee in accordance with subparagraph 15(d) of this Lease to an assignee or transferee who has agreed with the Landlord to be bound by the Tenant's covenants contained in this Lease, the liability (if any) of the leasehold mortgagee for any of the Tenant's covenants contained herein shall cease.
- (d) A leasehold mortgagee may enforce its Leasehold Mortgage (including acquiring leasehold title to the leasehold estate created by this Lease and to the Tenant's interest in the Premises) in any lawful way and, without limitation, a leasehold mortgagee may, by its representatives

or by a receiver, as the case may be, take possession of and manage the Premises and upon foreclosure of (or, without foreclosure, upon exercise of any contractual or statutory power of sale under) its Leasehold Mortgage, may sell, assign, convey or otherwise transfer such leasehold estate and the Tenant's interest in the Premises without the Landlord's prior consent, and following such sale, assignment, conveyance or transfer, the Landlord shall continue to perform all of the covenants and obligations of the Landlord as set out herein, provided that the leasehold mortgagee shall be liable to perform the obligations imposed upon the Tenant by this Lease only so long as the leasehold mortgagee has ownership or possession of such leasehold estate. The Landlord agrees that the said leasehold mortgagee, for as long as it has ownership or possession of the said leasehold estate, and any purchaser of such leasehold estate from the leasehold mortgagee or any successor or assignee of the leasehold mortgagee, shall, provided it is not in breach of the terms hereof, be entitled to the benefit of all of the terms and provisions contained in this Lease which benefit the Tenant, including, without limitation, any options to purchase, rights of first refusal, renewal or extension rights, dispute resolution mechanisms and any other terms and provisions which are contractual in nature.

- (e) When and for so long as there remains outstanding any Leasehold Mortgage, the Landlord and Tenant acknowledge and agree that unless the prior written consent of each leasehold mortgagee is obtained, the Tenant shall not be entitled to surrender or serve a notice terminating this Lease, nor to postpone this Lease to any mortgage or charge of the Landlord's interest in the Premises, nor to request from the Landlord, or agree with the Landlord to, any material change, amendment, alteration or modification to the terms and conditions of this Lease, and without such prior written consent of each leasehold mortgagee, any such surrender, notice, postponement or material change, amendment, alteration or modification shall be null and void and of no force and effect.
- (f) The Landlord agrees to execute and deliver such documents, assurances and agreements as any leasehold mortgagee (or potential leasehold mortgagee) may reasonably require in order to protect such leasehold mortgagee's (or potential leasehold mortgagee's) security in this Lease and in the Premises so long as such documents, assurances or other agreements do not materially adversely affect the right of the Landlord to receive the full amount of the rent hereunder or otherwise materially adversely affect the Landlord's rights hereunder.

15. Default Provisions

- (a) If the Tenant shall default in payment of rent or if the Tenant shall default in performing or observing any of its other covenants or obligations under this Lease, the Landlord shall give notice of such default to the Tenant. No such notice to the Tenant shall be valid for any purpose unless a similar notice is also given to each leasehold mortgagee that has delivered to the Landlord written notice of such leasehold mortgagee's Leasehold Mortgage in accordance with subparagraph 10 (c) of this Lease. If, after the expiration of:
 - (i) a period of thirty (30) days after the later of the giving of such notice to the Tenant and the giving of such notice to each leasehold mortgagee, in the case of a default hereunder in the payment of rent or the payment of any other liquidated sum hereunder; or

- (ii) a period of sixty (60) days after the later of the giving of such notice to the Tenant and the giving of such notice to each leasehold mortgagee, in the case of a default hereunder other than a default in the payment of rent or the payment of any other liquidated sum hereunder;

the default shall continue to exist, then in every such event, after the conclusion of such period of thirty (30) days in the case of a default in the payment of rent or the payment of any other liquidated sum hereunder or after the conclusion of such period of sixty (60) days in the case of a default other than a default in the payment of rent or the payment of any other liquidated sum hereunder (as the case may be) it shall be lawful for the Landlord to enter into and upon the Premises or any part thereof in the name of the whole and, at the option of the Landlord, this Lease shall expire as fully and completely as if the date on which such period expired was the date herein fixed for the expiration of the term hereof. Notwithstanding the foregoing provisions, if the default, not being a default in payment of rent or the payment of any other liquidated sum hereunder, reasonably requires more time to cure than such sixty (60) day period, the Landlord shall not have the option of entering upon the Premises or terminating this Lease provided the curing of the default is commenced within thirty (30) days after the giving of such notice to the Tenant and each leasehold mortgagee and is thereafter completed with due diligence.

- (b) The bankruptcy, insolvency, consolidation, amalgamation, arrangement, merger or reorganization of the Tenant under any laws then applicable, or the appointment of an assignee for the benefit of creditors or a receiver or receiver-manager of any of the assets of the Tenant, shall not be deemed a breach of this Lease or give rise to any right of the Landlord to terminate this Lease so long as the provisions of this Lease are otherwise complied with.
- (c) Any leasehold mortgagee shall have the right to perform any term, covenant, condition or agreement and to remedy any default by the Tenant hereunder and the Landlord shall accept such performance by a leasehold mortgagee with the same force and effect as if performed by the Tenant. If the Landlord shall give a notice of default to the Tenant pursuant to the provisions of this Lease and if such default has not been remedied within the applicable grace periods provided for in subparagraph 12(a) of this Lease, the Landlord shall allow the leasehold mortgagee an additional thirty (30) days within which to cure the default.
- (d) In the case of a default by the Tenant in the performance or observance of any term, covenant, condition or agreement on the Tenant's part to be performed or observed under this Lease (other than a term, covenant, condition or agreement requiring payment of a sum of money), if such default is of such a nature that it cannot practically be cured by the leasehold mortgagee without the leasehold mortgagee taking possession of the Premises, or if such default is of such a nature that the same cannot be cured by the leasehold mortgagee, then the Landlord shall not be entitled to terminate this Lease pursuant to the terms hereof or otherwise terminate the leasehold estate of the Tenant hereunder by reason of such default if and for so long as:
 - (i) in the case of a default which cannot practically be cured by the leasehold mortgagee without the leasehold mortgagee taking possession of the Premises, the leasehold mortgagee proceeds diligently to obtain possession of the Premises (whether through the appointment of a receiver or otherwise) and, upon obtaining possession of the

Premises, the leasehold mortgagee promptly commences and duly carries out to completion such action as may be necessary to cure such default;

- (ii) in the case of a default which cannot be cured by the leasehold mortgagee, the leasehold mortgagee promptly proceeds and diligently prosecutes to completion foreclosure proceedings, or acquires the Tenant's estate hereunder (whether in the leasehold mortgagee's name or through a nominee) by assignment (or otherwise) in lieu of foreclosure; provided that a leasehold mortgagee (including any sublessee, assignee or transferee of a leasehold mortgagee) shall not be required to remedy a default under this Lease which by its nature is not capable of being remedied by such leasehold mortgagee, sublessee, assignee or transferee; and

provided always in each such case that the rent payable pursuant to this Lease is being paid by the Tenant or the leasehold mortgagee.

- (e) If the Landlord shall become entitled to and does terminate this Lease (whether by re-entry, forfeiture or otherwise) on account of any breach, non-performance or default by the Tenant, the Landlord shall give written notice to every leasehold mortgagee promptly upon such termination of this Lease having been effected, accompanied by particulars of the nature and extent of the breach, non-performance or default which brought about such termination, and the Landlord agrees that upon the request of any such leasehold mortgagee (if such request is made in writing within thirty (30) days after the giving of the above mentioned notice to every leasehold mortgagee by the Landlord) the Landlord shall grant to such leasehold mortgagee or the nominee of such leasehold mortgagee (or, if more than one such leasehold mortgagee shall make such a request, grant to whichever of such leasehold mortgagees has priority as between the leasehold mortgagees making such requests) a new lease of the Premises between the Landlord as landlord and such leasehold mortgagee or the nominee of such leasehold mortgagee as tenant, for a term equal in duration to the remaining residue of the term of this Lease at the time this Lease was terminated, at the same rent and otherwise upon the same terms and including the same covenants, provisions, agreements and conditions as are contained in this Lease and having the same priority as this Lease with respect to any mortgage, lien, charge or other encumbrance created on the Premises by the Landlord or any person claiming by, under or through the Landlord; provided, however, that the Landlord's obligation to grant such new lease is conditional upon the Landlord being paid all monies which would have been lawfully due and owing under the forfeited Lease (other than damages or accelerated rent) including reasonable legal fees in connection therewith. If the Landlord shall have re-entered the Lands prior to the date on which the new lease shall be executed and delivered and shall have collected rents from any tenants of space in the Premises, there shall be deducted from any sums due to the Landlord upon the execution and delivery of the new lease an amount equal to the net revenues, if any, collected by the Landlord from the date of termination of this Lease to the date of execution and delivery of the new lease. The Landlord, upon execution of such new lease, shall deliver up possession of the Premises to such leasehold mortgagee or the nominee of such leasehold mortgagee subject only to such tenancies and other matters created by, under or through the Tenant. The existence of a non-monetary event of default which cannot be cured by such leasehold mortgagee shall not relieve the Landlord from its obligation to grant the new lease, in which event the leasehold mortgagee (and any assignees or transferees of such new lease from the leasehold mortgagee) shall not be required to cure the non-monetary event of default which is incapable of being cured by the leasehold mortgagee.

- (f) The liability of a leasehold mortgagee under a new lease granted pursuant to this Lease or as a result of a leasehold mortgagee becoming the owner of a leasehold interest in the Premises, whether by foreclosure or otherwise, shall terminate upon the assignment of the new lease or of the leasehold mortgagee's interest in this Lease by the leasehold mortgagee to a purchaser of its leasehold interest in the Lands provided the provisions of subparagraph 5 of this Lease are complied with.
- (g) The provisions of this paragraph 12 and paragraph 14 shall be enforceable by every leasehold mortgagee intended to be benefited thereby, notwithstanding that such leasehold mortgagee is not a party to this Lease, and whenever requested by the Tenant or any leasehold mortgagee intended to be benefited by the provisions of this Lease, the Landlord shall enter into an agreement directly with such leasehold mortgagee on the terms set out in this paragraph 12 and paragraph 14.

16. Force Majeure

- (a) Neither party to this Lease shall be deemed to be in default of any of its obligations hereunder during the time and to the extent that such party is prevented from or delayed in complying with its obligations hereunder, or during the time and to the extent that such party is prevented or delayed in proceeding with the Project, in whole or in part by reason of the default or delay of the other party in performance of its obligations hereunder, or by strikes, lock-outs or other industrial disturbances (including lock-outs decreed or recommended by any association of which the Tenant is a member), acts of God, acts of the Queen's enemies, lightning, earthquakes, floods, fires, explosions, inclement weather, breakage of or accident to machinery, riots, blockades, sabotage, wars, laws, orders or regulations of governmental bodies or agencies, court proceedings commenced by third parties, unavoidable accidents, inability to obtain governmental permits or approvals, or any other cause except lack of finances, whether similar or dissimilar to those specifically enumerated, beyond the reasonable control of the party affected.
- (b) If and to the extent this Lease provides any time period within which any action must be taken or concluded, including without limitation the achievement of the Commencement Date, the Access Date or the Commercial Operation Date as referred to in subparagraph 2(c) of this Lease, such time period shall be extended by the period equal to the time lost as a result of such default or delay of the other party or any of the above events.
- (c) A party affected by the default or delay of the other party or by any of the events referred to in subparagraph 16(a) of this Lease shall notify the other party in writing within a reasonable time after the notifying party becomes aware that it is entitled to claim relief under this paragraph 16, and each party shall use its reasonable efforts to inform the other party in advance of any event or circumstance which it reasonably anticipates may give rise to delay.

17. Arbitration

In the event of any dispute or difference between the Landlord and Tenant arises in regard to the terms of, or arising out of, this Lease, the determination of such dispute or difference shall be conducted in accordance with the following proceedings and principles:

- ~~(a) Within 10 days of written demand of either party setting out in writing the details, nature and extent of the matter to be arbitrated, all parties shall mutually agree in writing as to a~~

or threatened disruption in postal service, notices and other communications shall not be mailed but shall be delivered personally or by facsimile. For the purposes of this subparagraph 15(b) of this Lease, "Business Day" means any day other than a Saturday, a Sunday or a statutory holiday in the Province of Ontario.

- (c) Either party may, from time to time by notice given to the other in accordance with this paragraph, change its address or facsimile number for notices.

19. Certificates

The parties hereto at any time and from time to time upon not less than 10 days' prior written notice to the other shall execute, acknowledge and deliver to the other and to a leasehold mortgagee (or proposed leasehold mortgagee) or to a purchaser (or proposed purchaser) of any interest in the Premises a statement in writing stating that this Lease is unmodified and in full force and effect, if that is the case (or if there have been modifications, that the same is in full force and effect as modified, if that is the case, and stating the modifications) and stating the dates to which the rents and other monies payable under this Lease have been paid in advance, if any; if the statement is signed by the Landlord, stating whether, to the best knowledge of the signatory of such statement, the Landlord or the Tenant, as the case may be, is in default of any covenant, agreement or condition contained in this Lease or in the Agreement to Lease and, if so, specifying each such default of which the signatory may have knowledge; it being intended that any such statement delivered pursuant hereto may be relied upon by any purchaser or prospective purchaser of the Landlord's or Tenant's interest in the Premises or any leasehold mortgagee thereof or prospective leasehold mortgagee with respect to any interest in the Premises.

20. Captions

The captions appearing as headings in this Lease have been inserted as a matter of convenience and for reference only and in no way define, limit or enlarge the scope or meaning of this Lease or any of its provisions.

21. Illegality

Should any provision of this Lease be unlawful or not enforceable, such provision shall be considered separate and severable from this Lease and the remaining provisions of this Lease shall remain in full force as though such unlawful or unenforceable provision had never been included.

22. No Partnership or Joint Venture

Nothing herein shall be deemed to create or shall be construed as creating the relationship of principal and agent or joint venture between the Landlord and the Tenant.

23. Easements

The parties shall execute or join in documents appropriate to subordinate and subject their respective interests in the Premises to easements, rights of way and like interests which it is necessary or expedient to grant from time to time to any municipal or other public authority or public utility for any public or quasi-public purpose or in order to secure services or other privileges or advantages benefiting the Premises and which do not substantially impair the value of the Premises.

24. Approvals, Consents and Agreements

Where in any provision of this Lease any approval, consent or agreement (hereinafter in this paragraph 24 individually and collectively referred to as an "Approval") is required, then unless the contrary is expressly provided:

- (a) the party whose Approval is required will, within 60 days after the receipt of a request for Approval, accompanied in all cases by such reasonable detail as the circumstances require, notify the requesting party in writing either that it grants its Approval or, if it withholds its Approval, that it disapproves and setting forth in reasonable detail the reasons for withholding Approval;
- (b) if the notification referred to in subparagraph 24(a) is not given within the applicable period of time, the party whose Approval is requested will be deemed to have not given its Approval in writing.

25. Further Assurances

The Landlord will at the request and expense of the Tenant execute such further assurances as may be necessary or desirable from time to time to better assure and confirm to the Tenant the leasehold estate hereby granted and all rights of the Tenant conferred or intended to be conferred upon the Tenant by this Lease.

26. Time of the Essence

Time shall be of the essence of this Lease.

27. Gender/Number

In construing this Lease, the words "Landlord", "Tenant" and "leasehold mortgagee", and all personal pronouns shall be read as the gender and number of the party or parties referred to herein requires, and all necessary grammatical changes, as the context requires, shall be deemed to be made.

28. Registration

The Tenant shall have the right to register, at its cost and expense, this Lease, a short form thereof, or a memorandum or notice thereof, and the Landlord will co-operate with the Tenant in the execution and delivery of such documents as may be required to effectuate the foregoing in accordance with the requirements and usual practices of the Province of Ontario.

29. Governing Law

This Lease shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. Each of the parties to this Lease irrevocably attorns to the jurisdiction of the courts of the Province of Ontario.

30. Entire Agreement

Except as expressly set out herein with respect to the Agreement to Lease, this Lease contains the entire agreement between the parties and may not be modified orally or in any manner other than by

an agreement in writing signed by the parties hereto or their respective successors or permitted assigns.

31. Successors and Assigns


Each and all of the terms and agreements herein contained shall be binding upon and shall enure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and permitted assigns.


32. Planning Act

It is a condition of this Lease that it shall be effective to create an interest in the Lands only if the subdivision control provisions of the Planning Act (Ontario) have been complied with on or before the date of commencement of the term of this Lease. If required, the Landlord shall proceed diligently at its expense to obtain any necessary consent on or before such date.

IN WITNESS WHEREOF the parties hereto have duly executed this Lease as of and effective from the day and year first above written.


THE CORPORATION OF THE
TOWNSHIP OF MUSKOKA LAKES


Per: 
Name: D. FURNISS
Title: MAYOR

Per: 
Name: Cheryl Mortimer
Title: Clerk
Date: July 13, 2016

We have authority to bind the Corporation

SWIFT RIVER ENERGY LIMITED

Per: 
Name: ANTHONY ZWIG
Title: PRESIDENT

Per: 
Name: Frank Bekerig
Title: Vice President

We have authority to bind the Corporation

SCHEDULE "A"

PREMISES

- Parcel 1. The Landlord's freehold interest in the parcel of land immediately adjacent to and south of the North Bala Falls Small Hydro Project site that was transferred to the Township from the District in 2011 (PIN 48029- 0638);
- Parcel 2. The Landlord's leasehold interest in the parcel currently leased by the Landlord from the Ministry of Natural Resources and Forestry as the Shield Parking Lot (north end) (PIN 48029- 0634); and
- Parcel 3. The Landlord's freehold interest in the parcel of land known as the Portage Landing Parking Lot (south end) (PIN 48154-1077).

