

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

B E T W E E N:

MACQUARIE EQUIPMENT FINANCE LIMITED

Applicant

- and -

**VALIDUS POWER CORP., IROQUOIS FALLS POWER CORP., BAY
POWER CORP., KAP POWER CORP., VALIDUS HOSTING INC.,
KINGSTON COGEN LIMITED PARTNERSHIP AND KINGSTON COGEN
GP INC.**

Respondents

**IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, C. B-3, AS AMENDED;
AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, C. C.43,
AS AMENDED**

**SECOND SUPPLEMENTAL AFFIDAVIT OF JOSHUA HAMILTON STEVENS
(SWORN AUGUST 8, 2023)**

I, Joshua Hamilton Stevens, of the City of Sydney, in the State of New South Wales, in the Country of Australia, MAKE OATH AND SAY:

I. OVERVIEW

1. I swear this second supplemental affidavit in support of an application by Macquarie Equipment Finance Ltd. (the “**Applicant**”), to appoint KSV Restructuring Inc. (“**KSV**”) as receiver and manager in respect of the Validus Group. Unless otherwise indicated, capitalized terms used in this second supplemental affidavit and not otherwise defined shall have the meanings given to them in the affidavits I previously swore in support of this application on July 31 and August 2, 2023.

2. I either have direct knowledge of the facts set out herein or, where indicated, I have been advised by the indicated individuals and believe such information to be true.

3. Since the Applicant’s receivership application was adjourned on August 2, the Applicant has received further information about the Debtors from KSV, in its capacity as interim receiver of the Debtors (in such capacity, the “**Interim Receiver**”) that the Interim Receiver uncovered during its preliminary investigation into the Debtors’ affairs following its appointment. A copy of Justice Kimmel’s interim receivership order dated August 2, 2023 providing for such appointment and Her Honour’s accompanying endorsement are attached as **Exhibits “A” and “B”**, respectively.

4. During that period, the Debtors have also filed an affidavit sworn by Todd Shortt on August 7, 2023 in opposition to this application.

II. THE DEBTORS WILL COLLAPSE WITHOUT INTERVENTION

5. In the six days since that August 2 adjournment, the Debtors’ situation has become so dire that I believe they will collapse by the middle of next week unless this Court intervenes with a receivership.

6. Only hours after that August 2 adjournment, CIBC appears to have frozen \$550,000 of funds that were in two of the Debtors’ bank accounts and claimed to have a right to such amount in connection with the funds that certain Debtors allegedly misappropriated, as described at para

55 of my July 31 affidavit. Following the Debtors' payment of their last payroll on August 3, they had just \$122,862.66 left unfrozen in those bank accounts to satisfy their ongoing financial obligations and to safely operate their power generation plants.

7. The next payments to the Debtors from the IESO for participation in the capacity auction market—the Debtors' only source of income and cash flow, as I understand—are not payable to the Debtors until August 21. The quantum of that payment will not be ascertained until August 15 when the IESO issues its statement to the Debtors. In the meantime, the Debtors have numerous upcoming critical accounts payable, including payroll due on August 10, 14 and 18 in amounts of \$72,277.56, \$11,107.70 and \$24,797.76, respectively (*i.e.*, a combined total of \$108,183.02 for those three payroll dates). These amounts are net of source deductions. If plant staff leave as a result of not being paid, it is likely the plants will not be able to be operated and should be shut down.

8. Further, as I described in my July 31 affidavit, the Debtors' next insurance settlement payment—an amount of \$306,005—comes due on August 15, only *three business days* following the upcoming August 10 hearing for the Applicant's receivership application. If the Debtors fail to make that payment, their property insurance can be terminated, and continued operation of their power plants would become extremely risky and improvident. No prudent plant operator operates a power plant without insurance.

9. Any plant shutdown as a result of non-payment of payroll or insurance would result in the loss of revenues from the Debtors' arrangements with the IESO. That would cut off the Debtors' sole source of income for an extended length of time: it could potentially be months before the Debtors' power plants could be restarted.

10. However, this timeline might not even be possible, given the general disarray of the Debtors' affairs caused by their mismanagement. Specifically, I believe the Debtors could suffer an exodus of employees if the Debtors fail to make their next payroll on time. This risk is now severe. When I swore my July 31 and August 2 affidavits (and as I described therein), the Applicant suspected that the Debtors were behind on their payroll obligations based on: (i) the May 25, 2023 grievance from the union representing IFPC's employees; (ii) the absence of source deduction disbursements to CRA in certain Debtors' payroll records; and (iii) my

correspondence with Ryan Chua, the Debtors' General Counsel, about his significant unpaid wages, unreimbursed expenses he was told by the Debtors to incur, health benefits he had no choice but to pay out of pocket and the desperation he felt after receiving no help from the Debtors' management.

11. These suspicions have now been confirmed. On August 4, the Interim Receiver received an unverified breakdown of payroll liabilities from Shelley Goertz, the Debtors' Chief Financial Officer, which was shared with the Applicant that same day. According to that breakdown, the Debtors are a total of \$1,955,470.84 behind on their payroll obligations as of August 3. A full \$1,180,666.84 of those arrears are on account of unremitted source deductions according to that breakdown, and the Debtors have been behind on payroll obligations since October of last year—roughly ten months. Attached as **Exhibit "C"** is a copy of that breakdown. I am advised by Scott Bomhof of Torys LLP, counsel to the Applicant, and do believe, that the Interim Receiver has not verified the amounts set out in Exhibit "C" or verified that they represent all of the amounts owing with respect to payroll obligations.

12. The consequences of a mass employee resignation—an acute and imminent risk, based on these payroll arrears—is exacerbated by Ontario's very tight labour market for skilled power plant managers, operators and similar technical personnel. Any departed staff would be difficult, if not impossible, to replace in the short- or possibly even medium-term. This void would leave the Debtors' assets, the Applicant's collateral, effectively stranded without the ongoing operations and maintenance staff that are required to operate and prevent irreparable physical damage and degradation of the plants and equipment. Repair or replacement of such assets would be very costly and time-consuming and would only further impair the Applicant's collateral and delay the Debtors' ability to resume generating income.

III. MR. SHORTT'S AFFIDAVIT

13. Mr. Shortt's August 7 affidavit further illustrates the disconnect between the Debtors' management and the Debtors' actual state of disarray. In this section, I respond to points and allegations contained in that affidavit.

A. Alternative Sources of Funding will not Materialize

14. Mr Shortt claims at para 28 of his affidavit that he has “successfully arranged” alternative financing to take out the Applicant’s position. But Mr. Shortt does not provide any documentation in support of this claim, nor does he even provide basic details such as who the financier would be, what the principal amount would be or on what terms or timeline the financing would be advanced.

15. Mr. Shortt has been claiming that financing was just around the corner since at least January of this year. For example, Mr. Shortt signed a term sheet with a potential lender that outlined the terms and conditions under which that lender would consider providing a senior secured credit facility with a maximum availability of \$5,000,000 in respect of the Kingston plant on March 1 of this year. That funding ultimately failed to close. Redacted copies of that term sheet and an email from Craig Tavares forwarding that term sheet to me on May 5 are attached as **Exhibits “D” and “E”**, respectively. Those materials are redacted to comply with potential confidentiality obligations in respect of the term sheet.

16. To the best of my knowledge, funding never materialized at any point this year. I believe it is virtually impossible that funding would materialize now, given the state of the Debtors’ affairs, including their deficient books and records and extensive liabilities, the majority of which cannot even be ascertained at this time without access to the Debtors’ records. Among other things, any financier or equity investor would, at minimum, require copies of the Debtors’ books and records with reasonably detailed, accurate and verifiable financial and operational information. As I described in my July 31 affidavit, the Debtors’ books and records are extremely deficient and, in many cases, simply do not exist.

17. Fixing and preparing those records would be a costly process and require the intensive work of third-party professionals, as would any process for the marketing and solicitation of funding or an investment. The Debtors do not have the means to fund professionals to advance such a process, nor would the Applicant be willing to fund that in the absence of a court-supervised SISP led by a receiver. The Applicant has already provided funding for the Debtors’ failed four-month IFPC marketing and sale process, as detailed in paras 81 to 84 of my July 31 affidavit.

18. Additionally, with the Debtors' incredibly high risk profile, I believe that long term financing or investment would only be provided if the financier or investor received first-ranking security over the Debtors' assets—something that could only be obtained if the investment provided enough funds to take out, in full, the Applicant's claim, CRA's claims and the other secured creditors' claims. That total amount would exceed \$60 million, a sum that I believe would be virtually impossible for the Debtors to obtain before their business otherwise collapses.

19. Indeed, one of the prospective bidders in the IFPC sale process cited "reputational damages with suppliers/employees and the liens that have been put on" as reasons for not pursuing a bid. Attached as **Exhibit "F"** is an email I received on June 12, 2023 from the M&A Advisor relaying those concerns to me, the Debtors' Chief Operating Officer and the Debtors' General Counsel.

B. The Only Evidence of Value is the Failed IFPC Sale Process

20. Mr. Shortt, without providing any evidence, asserts that there is substantial value in the Debtors' assets just waiting to be unlocked. He claims at paras 19, 20, 23 and 30 of his affidavit that the Debtors are sitting on unrealized potential that far exceeds the Applicant's secured debt. However, Mr. Shortt puts forward no evidence on this.

21. Indeed, the only evidence in the record that touches on the value of the Debtors' business is the reality that the Debtors, with the M&A Advisor's assistance, were unable to find a buyer for IFPC during the sale and marketing process that ran between March and July of this year. Additionally, as described in para 15 above, Mr. Shortt was only able to obtain a non-committed term sheet in respect of the Kingston plant for a \$5,000,000 secured lending facility in March of this year that ultimately failed to close—an amount that does not support the value that Mr. Shortt attributes to the Debtors' assets in his affidavit.

22. Contrast that failed sale and marketing process to Mr. Shortt's unsupported claim at para 20 of his affidavit that IFPC alone is worth upwards of \$157 to \$215 million based on an appraisal from Kroll Canada Limited. Mr. Shortt failed to attach the Kroll report or to include any documentary proof to substantiate this appraisal. No information was provided on the currency or valuation date, the assumptions in the report or the information provided to Kroll. The Applicant was not involved in that valuation, and I have never received a copy of any such

appraisal. If IFPC is indeed worth what Mr. Shortt claims, I would have expected that value to be realized during the IFPC sale and marketing process. I also expect that a court-supervised sale process, if one is approved by this Court, will allow such valuations to be tested.

23. Mr. Shortt also claims at para 19 that the Kingston and North Bay plants have recently been approved for increased capacity of 500MW and 30MW, respectively. Based on my understanding, this is not accurate. Rather, I understand that Kingston LP and Bay Power submitted “deliverability tests” to the IESO that allowed them to enter into a request for proposal process to expand their capacity by those stated power amounts; this was not an award of a contract from the IESO. Both plants would therefore still be required to submit competitive proposals to the IESO, receive the IESO’s acceptance and receive a contract from the IESO before they could start generating revenue, a process that I understand can take up to one or two years to complete. If either plant were ultimately successful and were to receive a contract from the IESO, an outcome that is not guaranteed, the Debtors would then be required to earmark millions of dollars of investment in the plants to meet the resulting obligations under such IESO contract. I am not aware of any of the foregoing having occurred in respect of the Kingston or North Bay plants. An email from Craig Tavares sent on December 9, 2023 to my colleague describing those deliverability test results is attached as **Exhibit “G”**.

24. Mr. Shortt also describes in para 16 of his affidavit how it is “advantageous to own and operate a natural gas power plant today” and cites various generic reasons in support of that proposition, including increased demand for electricity, reduced supply of generation capacity and the general state of Ontario’s market for natural gas-driven electricity generation. Mr. Shortt does not tie any of these elements back to the Debtors’ operations, nor are any of these claims recent enough developments to have affected the value of the IFPC plant since the sale process failed last month. In fact, some of the factors that Mr. Shortt cites as proof of an improved market outlook are either unsupported by the data or the data otherwise supports the opposite conclusion.

25. For example, I am advised by Yining Yuan, Professional Engineer and Investment Banking Associate at Macquarie Group Company, that the average hourly demand for electricity in Ontario for the period of January 1 to August 1 was approximately 17.9 GW in 2022 and 17.5

GW in 2023—essentially unchanged. Likewise, I am further advised by Ms. Yuan that the available supply capacity in Ontario has remained essentially the same, moving only from 26.4 GW as of August 1, 2022 to 26.6 GW as of August 1, 2023. Additionally, since the Applicant’s sale and leaseback transaction in April 2022, the Canadian federal government announced its plan to develop its Clean Electricity Regulations, targeting a net zero grid by 2035. This development, and those regulations, have lowered the market interest in merchant natural gas power plants in Ontario due to their inability to pass through more burdensome and higher carbon costs to consumers.

C. Validus’ Problems are of their Own Making

26. Mr. Shortt claims in his affidavit that Validus’ numerous problems were somehow caused by the Applicant, rather than by the Debtors’ own mismanagement. The Applicant has not been “thwarting” the Debtors, as Mr. Shortt claims. To the contrary, as I described in detail in my July 31 affidavit, the Applicant has given substantial time and accommodation to the Debtors since their first monetary default in February of this year, including: (i) providing a four-month rent holiday; (ii) paying over \$1,421,369 of the Debtors critical expenses, including insurance payments; (iii) paying for a four-month sales process for IFPC; and (iv) otherwise waiting 54 days between delivering its notices of intention to enforce security to the Debtors and filing application materials.

27. As an example, Mr. Shortt claims that the Applicant’s transfer of cash from the Debtors’ accounts on July 31, 2023 and its subsequent set-off restricted Validus’ ability to satisfy its obligations. What Mr. Shortt fails to mention is that the Applicant left approximately \$800,000 in the Debtors’ accounts specifically so the Debtors could continue to meet their obligations, and that the transfer was approved by the Debtors’ Chief Financial Officer—all of which I described at para 98 of my July 31 affidavit. Instead, as noted, it was steps taken by CIBC to freeze \$550,000 of the Debtors’ funds on August 3 that left the Debtors with insufficient cash to meet their obligations. That action appears to be in response to the Debtors’ alleged misappropriation of that amount from CIBC’s internal accounts, as I described at para 55 of my July 31 affidavit.

28. Mr. Shortt further implies at para 18 of his affidavit, without substantiation or elaboration, that the Applicant restricted the Debtors’ ability to use its funds to pay and

reimburse legitimate expenses. The Applicant denies this. The Applicant obtained certain account controls on or around May 26, 2023 as part of the arrangements whereby the Debtors agreed to indemnify the Applicant for amounts the Applicant paid or funded to maintain the Debtors' operations. The Applicant was concerned that Debtor funds might be used for non-essential expenses, given that the Applicant intended to pay the Debtors' essential expenses. In that context, the Applicant and the Debtors therefore agreed that the Applicant would have the right to approve disbursements from certain Debtor accounts.

29. The Applicant was given disbursement approval rights only over three of the Debtors' accounts: two associated with IFPC and one associated with Kingston LP, not for other IFPC and Kingston LP accounts or any accounts of the remaining Debtors. The Applicant therefore never had full control over the Debtors' disbursements. Those disbursement approval rights were also put in place over a year after the Debtors had already failed to pay and remit HST, and months after the Debtors had failed to pay and remit municipal taxes, source deductions, RRSP contributions and other payroll obligations, among other things. The Applicant never blocked the Debtors from paying any proper and documented essential operating expenses that were loaded into the Debtors' accounts for disbursement.

30. Mr. Shortt also claims at para 17 that somehow "due to Macquarie's interference" the North Bay and Kapuskasing plants failed to meet their deadlines to participate in the IESO's capacity market. It is unclear to me what Mr. Shortt is referring to because no details were provided. The North Bay plant was not invited to participate in the IESO's capacity market for the Summer 2023 period. Furthermore, according to a letter from the IESO dated June 9, 2023, the Kapuskasing plant forfeited its capacity auction deposit and capacity obligation for the Summer 2023 period as a result of its failure to satisfy the applicable eligibility requirements. Ryan Forget, the Debtors' former General Manager of Power Generation, called this "good news" in a June 13 email because Kap Power would not incur penalties on a go forward basis. Copies of that June 9 letter and June 13 email are attached as **Exhibits "H" and "I"**, respectively.

D. The Kingston Purchase was an Improvident Default under the Lease Transaction Documents

31. In further support of Mr. Shortt's claim at para 27 of his affidavit that the Applicant has been actively "thwarting" the Debtors' attempts to improve their situation, Mr. Shortt cites a failed sale of land adjacent to the Kingston plant as evidence of the Applicant's interference. Mr. Shortt does not substantiate or elaborate on that claim. However, not only was Mr. Shortt's attempt to purchase that Kingston land a default under the Lease Transaction Documents, as reflected in the paragraphs that follow, it also illustrates management's misguided priorities, lack of transactional expertise to close deals (finance-related or otherwise) and unwillingness to make responsible use of the Debtors' limited funds.

32. The Applicant had no advance knowledge of the Kingston land transaction. Instead, I was advised by Craig Tavares, the Debtors' Chief Operating Officer,¹ on or around June 23, 2023, that a company outside of the Validus Group known as 2308189 Ontario Inc. ("**Non-Debtor Holdco**") had entered into a purchase agreement with Invista (Canada) Company ("**Invista**") dated March 27, 2023 to purchase the real property adjoining the Kingston power plant (the "**Kingston APA**"). Non-Debtor Holdco was incorporated on December 5, 2011, with Sandra Watt as its director and, according to Non-Debtor Holdco's signature block in the Kingston APA, Mr. Shortt as its President and CEO. A copy of a corporate profile report on Non-Debtor Holdco that was run on June 28, 2023, is attached as **Exhibit "J"**.

33. As part of that transaction, Non-Debtor Holdco paid or caused to be paid a total deposit to Invista of \$300,000; Mr. Shortt claims at para 27 of his affidavit that he provided those funds personally, but he has never provided proof of this to the Applicant and it is unclear whether it instead came from the Debtors' funds. In any event, for reasons unknown to the Applicant, and contrary to the express terms of the Lease Transaction Documents (including, among others, section 4.30 of the Participation Agreement), Validus Power Corp. guaranteed Non-Debtor Holdco's obligations under the Kingston APA pursuant to an amendment of the Kingston APA dated June 15, 2023, in exchange for an extension of the due date of that deposit from June 26 to

¹ As I described in my August 2 affidavit, Mr. Tavares wrote in an email on July 26 that he no longer has any involvement in the Debtors' day-to-day operations. The title of Chief Operating Officer is now therefore likely a formality, rather than a description of his actual role in the Debtors' business.

July 24, 2023. Copies of the Kingston APA and the amendment thereto are attached as **Exhibits “K” and “L”**, respectively.

34. On July 3, 2023, the Applicant notified the Debtors by email that Validus Power Corp.’s guarantee of the obligations of Non-Debtor Holdco under the amended Kingston APA was an event of default under the Lease Transaction Documents. A copy of that July 3 email is attached as **Exhibit “M”**.

35. I am not aware of any business need or other justification for Non-Debtor Holdco’s attempted purchase of this land. It is also unclear to the Applicant what motives were behind the decision to use Non-Debtor Holdco as purchaser, rather than a Debtor. I note my concern, however, that any benefits that would have accrued to Non-Debtor Holdco under this transaction would have been outside of the Applicant’s security.

36. Based on email correspondence from Invista’s counsel dated July 24, 2023, Non-Debtor Holdco failed to close the deal for this adjacent Kingston property on its July 24 closing date, and, as a result, it forfeited the \$300,000 deposit to Invista. A copy of that July 24 email is attached as **Exhibit “N”**. This failure shows that the Debtors’ management lacks the ability to competently complete or close corporate transactions.

37. The fact that the Debtors’ management decided to spend time and use \$300,000 of funds to pursue this transaction while their critical obligations went unpaid, including nearly \$2,000,000 of payroll arrears and critical insurance payments, also illustrates management’s lack of diligence and urgency in the face of a deteriorating business.

E. Mr. Shortt’s Other Miscellaneous Claims

38. Mr. Shortt also makes the following claims in his affidavit that warrant a response from the Applicant:

39. The interim receivership is not a solution. Mr. Shortt suggests at paras 30-31 of his affidavit that the interim receivership implemented by Justice Kimmel on August 2 fully protects the Applicant’s position and allows KSV to monitor and control the business. In reality, the interim receivership is only a temporary solution that was implemented to permit the Debtors

time to file reply materials to the within application, and the Applicant will not provide ongoing funding to the Debtors unless a full receivership order is granted by this Court, regardless of whether the Interim Receiver remains in place. The Applicant will also not consent to any court-ordered charges in favour of an alternative lender that would have the effect of subordinating its security interest in the Debtors' property.

40. Mr. Shortt was involved in the IFPC sale process. Mr. Shortt claims at para 21 of his affidavit that he "was not involved in the earlier sale process through Ernst & Young". However, Mr. Shortt himself signed an engagement letter and a representation letter to the M&A Advisor in that sale process and was regularly copied on email correspondence in respect of that sale process. Copies of that engagement letter and that representation letter with Mr. Shortt's signature are attached as **Exhibits "O" and "P"**. Mr. Shortt even invited staff of the M&A Advisor and the Applicant to attend a Blue Jays game in his corporate box. A copy of an email from Mr. Shortt dated April 25, 2023 with his invitation to that Blue Jays game is attached as **Exhibit "Q"**.

41. The Debtors' income fluctuates month-to-month. Mr. Shortt notes at para 17 of his affidavit that the Debtors currently receive over \$2,000,000 per month in income. However, the actual amount of income generated from their arrangements with the IESO fluctuates month-to-month. For example, it is unclear how much the Debtors will receive from their next IESO payment until August 15 when the IESO delivers its statement for the previous month. The Debtors income will also drop during the upcoming winter period, when the per unit revenues for electricity capacity are around half of those for the summer period.

42. Receivership would save, not destroy, the business. Mr. Shortt claims at para 29 that a receivership would "destroy" the Debtors' business. To the contrary, the Debtors' business is on the verge of collapse, as I described above, and the only solution to the Debtors' many problems is a receivership that puts competent leadership in charge and provides for court-approved funding from the Applicant while a SISP is undertaken for the benefit of stakeholders.

43. The Applicant advanced \$45 million plus HST, not \$36 million. Mr. Shortt mistakenly writes at para 7 of his affidavit that the Applicant only advanced \$36 million to the Debtors. In

fact, the Applicant advanced \$45 million plus HST on April 7, 2022 under the Lease Transaction Documents, as I describe in para 31(a) of my July 31 affidavit.

44. The Debtors have already paid back millions to the Applicant. Mr. Shortt claims at para 7 of his affidavit that the Debtors have “already paid back millions of dollars” to the Applicant. As noted at para 27 above and para 98 of my July 31 affidavit, the Applicant indeed transferred \$2,012,950 from the Debtors’ accounts and applied those amounts to the Debtors’ outstanding indebtedness by way of a set-off in accordance with the Lease Transaction Documents. To be clear, however, that set-off is the only amount that the Applicant has ever received from the Debtors on account of their indebtedness following their first failure to pay rent in February of this year.

45. Reimbursements remain unsubstantiated. Mr. Shortt notes at para 25 that the approximately \$20,000 and \$85,000 that he and Ms. Goertz sought to be paid from the Debtors’ funds were for “company expenses”, and that the Applicant had “promised to reimburse” those amounts. However, Mr. Shortt did not actually provide substantiation of those amounts in his affidavit. Nor did the Applicant ever promise to pay those amounts. Rather, Ms. Goertz told me in her July 31 email where she requested reimbursement that she would provide the Applicant with “108 receipts” to substantiate her request. The Applicant never received those receipts or any other form of substantiation from Ms. Goertz. A copy of Ms. Goertz’s July 31 email is attached as **Exhibit “R”**.

46. The Applicant has provided a claim breakdown. Mr. Shortt writes at para 8 of his affidavit that the Applicant did not provide the Debtors with a breakdown of its claim. I provided a breakdown of the Applicant’s claim against the Debtors at para 9 of my July 31 affidavit, which breakdown follows the provisions set out at section 13.1(f) of the Lease Agreement, itself attached as Exhibit “C” to my July 31 affidavit (which provisions were referenced in the Applicant’s demand letters for the Accelerated Payment delivered to the Debtors on July 24, 2023). Mr. Bomhof has advised me that he has also provided a detailed breakdown to the Debtors’ counsel on August 8, 2023.

IV. CONCLUSION: THE APPLICANT WOULD NOT SUPPORT ANY PATH FORWARD WITH MANAGEMENT IN CHARGE

47. The Applicant strongly opposes any path forward that keeps the Debtors' management in charge of the business. The Applicant will not provide funding to the Debtors if the adjournment that was granted by this Court on August 2 were to be extended for any length of time, regardless of whether the Interim Receiver remains in place.

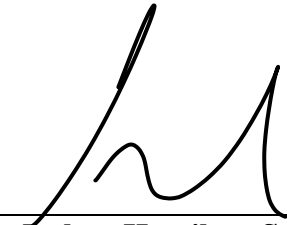
SWORN REMOTELY by Joshua Hamilton Stevens at the City of Sydney, in the State of New South Wales, in the Country of Australia, before me on August 8, 2023 in accordance with O.Reg. 431/20, Administering Oath or Declaration Remotely.

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Commissioner for Taking Affidavits
(or as may be)

MICHAEL NOEL
(LSO#: 80130F)



Joshua Hamilton Stevens

THIS IS **EXHIBIT “A”** REFERRED TO IN THE
AFFIDAVIT OF JOSHUA HAMILTON STEVENS,
AFFIRMED REMOTELY BY JOSHUA HAMILTON
STEVENS BEFORE ME *BY VIDEO CONFERENCE*,
THIS 8th DAY OF AUGUST, 2023.



Michael Noel
Commissioner for Taking Affidavits

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE) WEDNESDAY, THE 2nd
JUSTICE KIMMEL) DAY OF AUGUST, 2023

B E T W E E N:

MACQUARIE EQUIPMENT FINANCE LIMITED

Applicant

- and -

**VALIDUS POWER CORP., IROQUOIS FALLS POWER CORP., BAY
POWER CORP., KAP POWER CORP., VALIDUS HOSTING INC.,
KINGSTON COGEN LIMITED PARTNERSHIP AND
KINGSTON COGEN GP INC.**

Respondents

APPLICATION UNDER SECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED; AND SECTION 101 OF
THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED

ORDER
(Appointing Interim Receiver)

THIS MATTER was heard this day by judicial video conference via Zoom in Toronto,
Ontario.

ON READING the Notice of Application of the Applicant, dated July 31, 2023, filed; the
affidavit of Joshua Hamilton Stevens, sworn July 31, 2023 (the “**Stevens Affidavit**”) and the

exhibits thereto, filed; factum of the Applicant, dated July 31, 2023, filed; and consent of KSV to act as Receiver, dated July 24, 2023, filed;

AND UPON hearing the submissions of counsel for the Interim Receiver, counsel for the Applicant, counsel for the Debtors, and such other counsel who were present, no one else appearing although duly served as appears from the lawyer's certificate of service of Mike Noel sworn August 1, 2023 and the affidavit of service of Kunalan Shelvarajah sworn August 1, 2023, filed.

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this matter is properly heard today and hereby dispenses with further service thereof.

ADJOURNMENT

2. **THIS COURT ORDERS** that the application of Macquarie Equipment Finance Ltd. (the "**Applicant**") for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**") appointing KSV Restructuring Inc. ("**KSV**") as receiver and manager (in such capacities, the "**Receiver**") without security, of all of the assets, undertakings and properties of Validus Power Corp., Iroquois Falls Power Corp., Bay Power Corp., Kap Power Corp., Validus Hosting Inc., Kingston Cogen Limited Partnership and Kingston Cogen GP Inc. (collectively, the "**Debtors**", and each a "**Debtor**") acquired for, or used in relation to a business carried on by the Debtors, or any of them, including, without limitation, the real property described in Schedule "A" hereto, is adjourned and set over to a hearing to be held on August 10, 2023, subject to this Court's availability.

APPOINTMENT

3. **THIS COURT ORDERS** that pursuant to section 47(1) of the BIA and section 101 of the CJA, KSV is hereby appointed Interim Receiver (the "**Interim Receiver**", without security, of all

of the assets, undertakings and properties of the Debtors acquired for, or used in relation to a business carried on by the Debtors, or any of them, including, without limitation, the real property known described in Schedule “A” hereto (the “**Property**”) until the earlier of:

- (a) the taking of possession of the Property by a receiver, within the meaning of subsection 243(2) of the BIA; and
- (c) August 10, 2023.

INTERIM RECEIVER’S POWERS

4. **THIS COURT ORDERS** that the Interim Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Interim Receiver is hereby expressly empowered and authorized to do any of the following where the Interim Receiver considers it necessary or desirable:

- (a) to monitor and evaluate the business, operations and property of the Debtors, and in the event that (i) the employment of any of any of Todd Short, Shelley Goertz or Doug Konno ceases for any reason, to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property, including, without limitation the Debtors’ bank accounts wherever located; and (ii) provided that the Interim Receiver authorizes the payment of the normal course salary and benefits to the plant managers, in the event that the employment of a plant manager of a Debtor ceases for any reason, to take possession of and exercise control over the Property of that Debtor and any and all proceeds, receipts and disbursements arising out of or from the Property of that Debtor, including, without limitation that Debtors’ bank accounts wherever located;
- (b) to monitor the Debtors’ bank accounts and approve all disbursements from the Debtors’ bank accounts;
- (c) to engage independent security personnel to preserve and protect the Property;

- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Interim Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to report to, meet with and discuss with such affected Persons (as defined below) as the Interim Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Interim Receiver deems advisable;
- (f) to undertake any investigations deemed appropriate by the Interim Receiver with respect to the business and affairs of the Debtors;
- (g) to apply to this Court for such further relief, advice and directions as the Interim Receiver may determine as necessary or desirable;
- (h) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations, including opening any mail or other correspondence addressed to any of the Debtors.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE INTERIM RECEIVER

5. **THIS COURT ORDERS** that: (i) the Debtors; (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel, equity holders, including, without limitation, investors and shareholders, and all other persons acting on their instructions or behalf; (iii) all construction managers, project managers, contractors, subcontractors and service providers, and all other persons acting on their instructions or behalf; and (iv) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being “**Persons**” and each being a “**Person**”) shall forthwith advise the Interim Receiver of the existence of any Property in such Person’s possession or control, shall grant immediate and continued access to the Property to the Interim Receiver.

6. **THIS COURT ORDERS** that all Persons shall forthwith advise the Interim Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records, information and cloud-based data of any kind related to the business or affairs of the Debtors, and any computer programs, computer tapes, computer disks, cloud or other data storage media containing any such information (the foregoing, collectively, the “**Records**”) in that Person’s possession or control, and shall provide to the Interim Receiver or permit the Interim Receiver to make, retain and take away copies thereof and grant to the Interim Receiver unfettered access to and use of accounting, computer, software, cloud and physical facilities relating thereto, provided however that nothing in this paragraph 6 or in paragraph 7 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Interim Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

7. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer, in the cloud or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Interim Receiver for the purpose of allowing the Interim Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Interim Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Interim Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Interim Receiver with all such assistance in gaining immediate access to the information in the Records as the Interim Receiver may in its discretion require including providing the Interim Receiver with instructions on the use of any computer, cloud or other system and providing the Interim Receiver with any and all access codes, account names, account numbers, account creating credentials that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE INTERIM RECEIVER

8. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”), shall be commenced or continued against the Interim Receiver except with the written consent of the Interim Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY

9. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtors, or any of them, or the Property shall be commenced or continued except with the written consent of the Interim Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtors, or any of them, or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

10. **THIS COURT ORDERS** that all rights and remedies against the Debtors, or any of them, the Interim Receiver, or affecting the Property, including, without limitation, licences and permits, are hereby stayed and suspended except with the written consent of the Interim Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any “eligible financial contract” as defined in the BIA, and further provided that nothing in this paragraph shall: (i) empower the Interim Receiver or the Debtors, or any of them, to carry on any business which the Debtors, or any of them, is not lawfully entitled to carry on; (ii) exempt the Interim Receiver or the Debtors, or any of them, from compliance with statutory or regulatory provisions relating to health, safety or the environment; (iii) prevent the filing of any registration to preserve or perfect a security interest; or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE INTERIM RECEIVER

11. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtors, or any of them, without written consent of the Interim Receiver or leave of this Court.

CONTINUATION OF SERVICES

12. **THIS COURT ORDERS** that all Persons, including, without limitation, the Validus Group, having oral or written agreements with the Debtors, or any of them, or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, construction management services, project management services, permit and planning management services, accounting services, centralized banking services, payroll services, insurance, employee benefits, transportation services, utility or other services to the Debtors, or any of them, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Interim Receiver (including, where a notice of termination may have been given with an effective date after the date of this Order), and that the Interim Receiver shall be entitled to the continued use of the Debtors' current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Interim Receiver in accordance with normal payment practices of the Debtors or such other practices as may be agreed upon by the supplier or service provider and the Interim Receiver, or as may be ordered by this Court.

EMPLOYEES

13. **THIS COURT ORDERS** that all employees of the Debtors, or any of them, shall remain the employees of the applicable Debtor. The Interim Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Interim Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

LIMITATION ON ENVIRONMENTAL LIABILITIES

14. **THIS COURT ORDERS** that nothing herein contained shall require the Interim Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated,

might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the “**Environmental Legislation**”), provided however that nothing herein shall exempt the Interim Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Interim Receiver shall not, as a result of this Order or anything done in pursuance of the Interim Receiver’s duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE INTERIM RECEIVER’S LIABILITY

15. **THIS COURT ORDERS** that the Interim Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Interim Receiver by section 14.06 of the BIA or by any other applicable legislation.

INTERIM RECEIVER’S ACCOUNTS

16. **THIS COURT ORDERS** that the Interim Receiver and counsel to the Interim Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Interim Receiver and counsel to the Interim Receiver shall be entitled to and are hereby granted a charge (the “**Interim Receiver’s Charge**”) on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Interim Receiver’s Charge shall form a first charge on the Property in priority to all security interests,

trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

17. **THIS COURT ORDERS** that the Interim Receiver and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Interim Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

18. **THIS COURT ORDERS** that prior to the passing of its accounts, the Interim Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Interim Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE INTERIM RECEIVERSHIP

19. **THIS COURT ORDERS** that the Interim Receiver be at liberty and it is hereby empowered to borrow from the Applicant by way of a credit facility, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$400,000 (or such greater amount that is acceptable to the Applicant and as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Interim Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the “**Interim Receiver’s Borrowings Charge**”) as security for the payment of the monies borrowed, together with interest, fees and charges thereon, in priority to all security interests, trusts (including, without limitation, deemed trusts), liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Interim Receiver’s Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

20. **THIS COURT ORDERS** that neither the Interim Receiver's Borrowings Charge nor any other security granted by the Interim Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

21. **THIS COURT ORDERS** that the Interim Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "B" hereto (the "**Interim Receiver's Certificates**"), as modified to reflect the terms of the credit facility between the Interim Receiver and Applicant referred to in paragraph 19, for any amount borrowed by it pursuant to this Order.

22. **THIS COURT ORDERS** that the monies from time to time borrowed by the Interim Receiver pursuant to this Order or any further order of this Court and any and all Interim Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Interim Receiver's Certificates.

SERVICE AND NOTICE

23. **THIS COURT ORDERS** that The Guide Concerning Commercial List E-Service (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <https://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: <https://www.ksvadvisory.com/experience/case/validus-power-corp.>

24. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Interim Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to any creditors of the Debtors, or any of them, or other interested parties at their

respective addresses as last shown on the records of the Debtors, or any of them, and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

25. **THIS COURT ORDERS** that the Applicant, the Interim Receiver and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Debtors' creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 8100-2-175 (SOR/DORS).

GENERAL

26. **THIS COURT ORDERS** that the Interim Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

27. **THIS COURT ORDERS** that nothing in this Order shall prevent the Interim Receiver from acting as a receiver, trustee in bankruptcy or monitor of the Debtors, or any of them.

28. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Interim Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Interim Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Interim Receiver and its agents in carrying out the terms of this Order.

29. **THIS COURT ORDERS** that the Interim Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever

located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Interim Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

30. **THIS COURT ORDERS** that the Applicant shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Interim Receiver from the estates of the Debtors, or any of them, with such priority and at such time as this Court may determine.

31. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Interim Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

32. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Prevailing Eastern Time on the date hereof without any need for entry and/or filing.

 Digitally signed
by Jessica Kimmel
Date: 2023.08.02
22:34:10 -04'00'

SCHEDULE "A"

DESCRIPTION OF REAL PROPERTY

Iroquois Falls Power Corp.

Firstly:

PIN 65337-0369 (LT)

PCL 9012 SEC NEC SRO; PT LT 11 CON 5 TEEFY PT 1, 6R6645 T/W PT 1 TO 4, 6R6644 & 1 TO 6, 6R6626 AS IN C447208 AMENDED BY C470222 T/W PT 2 TO 7 & 13 TO 16, 6R6645 AS IN C447209 AMENDED BY C470223 T/W PT 2, 6 TO 12, 6R6645 AS IN C447211 AMENDED BY C470225 T/W PT 17 TO 19, 6R6645 AS IN C447212 AMENDED BY C470226 T/W PT 1, 6R6898 AS IN C469024 AMENDED BY C470227 T/W PT 4 & 5, 6R6896 AS IN C469025 AMENDED BY C470228 T/W C469026 AMENDED BY C470229 T/W PT 1 & 2, 6R6853 AS IN C474890 AMENDED BY C521180 ; TOWN OF IROQUOIS FALLS

Secondly:

PIN 65337-0456 (LT)

SURFACE RIGHTS ONLY; PT S 1/2 LT 12 CON 3 TEEFY PT 1, 6R5962 EXCEPT PT 1, 6R8283 S/T PT 2, 6R6832 AS IN C469070 AMENDED BY C470222, C470223, C470224, C470225, C470226, C470227, C470228, C470229 & C470230; DISTRICT OF COCHRANE

Thirdly:

PIN 65337-0458 (LT)

SURFACE RIGHTS ONLY; S 1/2 LT 12 CON 3 TEEFY EXCEPT PT 1, 6R5962, PTS 2 & 3, 6R8283 & PT 1, 6R8318, S/T PT 1, 3 & 4, 6R6832 AS IN C469070 AMENDED BY C470222, C470223, C470224, C470225, C470226, C470227, C470228, C470229 & C470230 ; DISTRICT OF COCHRANE

Fourthly:

PIN 65337-0372 (LT)

PCL 9070 SEC NEC; LOCATION RY 357 TEEFY COMPOSED OF THOSE PARTS OF THE BED OF THE ABITIBI RIVER LYING IN FRONT OF LT 11, CON 5, PT 2, 6R6853; DISTRICT OF COCHRANE

Fifthly:

PIN 65337-0373 (LT)

PCL 9070 SEC NEC; LOCATION RY 357 TEEFY COMPOSED OF THOSE PARTS OF THE BED OF THE ABITIBI RIVER LYING IN FRONT OF LT 11, CON 3, PT 1, 6R6853; DISTRICT OF COCHRANE

Kap Power Corp.

Firstly:

PIN 65095-0051 (LT)

PCL 12700 SEC CC; PT LT 24 CON 11 O'BRIEN PT 2, 6R6749 T/W PT 3, CR548 AS IN C478024; TOWN OF KAPUSKASING

Secondly:

PIN 65095-0052 (LT)

PCL 12927 SEC CC; PT LT 23 CON 10 O'BRIEN PT 1, 6R5800 T/W PARTS 1 & 2, 6R6731 AS IN C452347 T/W PT 3, 6R6731 AS IN C451853 T/W PARTS 4 & 5, 6R6731 AS IN C451851 T/W PARTS 3 TO 7, 6R6749 AS IN C453701 T/W PT 3, CR548 AS IN C478024; TOWN OF KAPUSKASING

Bay Power Corp.

PIN 49127-0021 (LT)

PCL 18734 SEC WF; PT LT 21 CON 2 WIDDIFIELD PT 7 & 8, 36R9382 T/W PT 1, 36R9384 AS IN LT332823, PT 1, 36R9381 AS IN LT332824, PT 2, 36R9381 AS IN LT332826, PT 2, 36R9384 AS IN LT332902, PT 3 & 9, 36R9381 AS IN LT332885, PT 7 & 8, 36R9381 AS IN LT333337, PT 4-6, 36R9381 AS IN LT339664, PT 2, 36R9382 & PT 1, 2, 3 & 5, 36R10374 AS IN LT366707, PT 1-3, 36R10375 AS IN LT366710; T/W LT366708 & LT366709; NORTH BAY ; DISTRICT OF NIPISSING

Kingston Cogen GP Inc.

Firstly:

PIN 45132-0375 (LT)

PT LT 23 CON 1 ERNESTOWN PT 1 29R6737; TOGETHER WITH AN EASEMENT AS IN LA69824; TOGETHER WITH AN EASEMENT AS IN LA208637; TOGETHER WITH AN EASEMENT AS IN LA208644; TOGETHER WITH AN EASEMENT AS IN LA210426; TOGETHER WITH AN EASEMENT AS IN LA210734; TOGETHER WITH AN EASEMENT AS IN LA210736; TOGETHER WITH AN EASEMENT AS IN LA210738; TOGETHER WITH AN EASEMENT OVER PTS 1 - 49 29R9849 UNTIL 2025/12/31 AS IN LX37160; TOGETHER WITH AN EASEMENT OVER PTS 1,3,4 29R6966 UNTIL 2025/12/31 AS IN LX37161; TOGETHER WITH AN EASEMENT OVER PTS 1 - 50 29R9850 UNTIL 2025/12/31 AS IN LX37162; TOGETHER WITH AN EASEMENT OVER PTS 1 - 11 29R9845 UNTIL 2030/12/31 AS IN LX37163; TOGETHER WITH AN EASEMENT OVER PTS 1 - 71 29R9851 UNTIL 2025/12/31 AS IN LX37164; TOGETHER WITH AN EASEMENT OVER PTS 1 - 14 29R9846 UNTIL 2025/12/31 AS IN LX37165; TOGETHER WITH AN EASEMENT OVER PTS 1 - 16 29R9847 AS IN LX37166; TOGETHER WITH AN EASEMENT OVER PTS 1 - 7 29R6860, PTS 1 & 2 29R7373, PTS 1 - 13 29R7650 AS IN LX37167; LOYALIST TOWNSHIP

Secondly:

PIN 45132-0377 (LT)

PT LT 24 CON BROKEN FRONT ERNESTOWN, PTS 1 TO 12 29R9843; T/W LA69824;; TOGETHER WITH AN EASEMENT OVER PTS 1 - 49 29R9849 UNTIL 2025/12/31 AS IN LX37160; TOGETHER WITH AN EASEMENT OVER PTS 1,3,4 29R6966 UNTIL 2025/12/31 AS IN LX37161; TOGETHER WITH AN EASEMENT OVER PTS 1 - 50 29R9850 UNTIL 2025/12/31 AS IN LX37162; TOGETHER WITH AN EASEMENT OVER PTS 1 - 11 29R9845 UNTIL 2030/12/31 AS IN LX37163; TOGETHER WITH AN EASEMENT OVER PTS 1 - 4 29R9844 AS IN LX37168; TOGETHER WITH AN EASEMENT OVER PTS 1 - 12 29R9843 AS IN LX37169; SUBJECT TO AN EASEMENT OVER PTS 1 - 12 29R9843 IN FAVOUR OF LA285539 (PARCELS 1,2,3); EXCEPT PTS 1 - 12 29R9843 & LA285539 (PARCEL 4) AS IN LX37170; LOYALIST TOWNSHIP

Thirdly:

PIN 45132-0362 (LT) – (Registered Owner: Invista (Canada) Company)

LOC. CL14116, BEING PT OF THE BED OF LAKE ONTARIO IN FRONT OF LT 24, BROKEN FRONT CON. ERNESTOWN, PT 1 29R9227; LOYALIST

Pursuant to Instrument No. LX37609 registered on October 26, 2011, being an Application General (Sublease).

SCHEDULE “B”

INTERIM RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that KSV Restructuring Inc., the interim receiver (the “**Interim Receiver**”) of the assets, undertakings and properties of Validus Power Corp., Iroquois Falls Power Corp., Bay Power Corp., Kap Power Corp., Validus Hosting Inc., Kingston Cogen Limited Partnership and Kingston Cogen GP Inc. acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the “**Property**”) appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated the ___ day of July, 2023 (the “**Order**”) made in an action having Court file number _____, has received as such Interim Receiver from the holder of this certificate (the “**Lender**”) the principal sum of \$ _____, being part of the total principal sum of \$ _____, which the Interim Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the ___ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Interim Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Interim Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Interim Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Interim Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Interim Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 2023.

KSV RESTRUCTURING INC., solely in its capacity as Interim Receiver of the Property, and not in its personal capacity

Per: _____
Name:
Title:

MACQUARIE EQUIPMENT FINANCE LIMITED v VALIDUS POWER CORP. et al.

Court File No. CV-23-00703754-00CL

IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED; AND SECTION 101 OF THE *COURTS OF
JUSTICE ACT*, R.S.O. 1990, C. C.43, AS AMENDED

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at TORONTO

**ORDER
(Appointing Interim Receiver)**

Torys LLP

79 Wellington St. W., 30th Floor
Box 270, TD South Tower
Toronto, ON M5K 1N2
Fax: 416.865.7380

Scott A. Bomhof (LSO#: 37006F)
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Jeremy Opolsky (LSO#: 60813N)
Tel: 416.865.8117 | jopolsky@torys.com

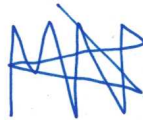
Mike Noel (LSO#: 80130F)
Tel: 416.865.7378 | mnoel@torys.com

Alina Butt (LSO#: 84168W)
Tel: 416.865.7973 | abutt@torys.com

Lawyers for Macquarie Equipment Finance Limited, the
Applicant

THIS IS **EXHIBIT “B”** REFERRED TO IN THE
AFFIDAVIT OF JOSHUA HAMILTON STEVENS,
AFFIRMED REMOTELY BY JOSHUA HAMILTON
STEVENS BEFORE ME *BY VIDEO CONFERENCE*,

THIS 8th DAY OF AUGUST, 2023.



Michael Noel
Commissioner for Taking Affidavits



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL SLIP/ENDORSEMENT

COURT FILE NO.: CV-23-00703754-00CL DATE: 2 August 2023

NO. ON LIST: 2

TITLE OF PROCEEDING: **Macquarie Equipment Finance Limited v.
Validus Power Corp.**

BEFORE JUSTICE: **KIMMEL**

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

| Name of Person Appearing | Name of Party | Contact Info |
|--------------------------|---------------|--------------------|
| Jeremy Opolsky | Applicant | jopolsky@torys.com |
| Scott Bomhof | | sbomhof@torys.com |

For Defendant, Respondent, Responding Party, Defence:

| Name of Person Appearing | Name of Party | Contact Info |
|--------------------------|---------------|--------------------------|
| Catherine Francis | Respondents | cfrancis@mindengross.com |
| | | |

For Other, Self-Represented:

| Name of Person Appearing | Name of Party | Contact Info |
|--------------------------|--|-----------------------------------|
| Brett Harrison | CIBC | Brett.harrison@mcmillan.ca |
| Evan Cobb | Counsel for the Proposed Receiver | Evan.cobb@nortonrosefulbright.com |
| David Sieradzki | KSV Restructuring Inc. (Proposed Receiver) | dsieradzki@ksvadvisory.com |

ENDORSEMENT OF JUSTICE KIMMEL:

1. The applicant seeks the appointment of KSV Restructuring Inc. ("KSV") as receiver and manager (in such capacity, the "Receiver") pursuant to section 243(1) of the *Bankruptcy and Insolvency Act* and section 101 of the *Courts of Justice Act* (Ontario) over all of the undertakings, properties and assets ("Property") of the respondents to this application (collectively, the "Debtors" or "Validus Group").
2. The Validus Group is a power generation company that generates and sells power to the Independent Energy System Operator ("IESO") as a participant in its "capacity auction" market. The Validus Group's operations consist of four power plants located in the Ontario regions of North Bay, Kapuskasing, Iroquois Falls and Kingston. They also own a non-operational data centre in North Bay.
3. There are complicated lending and transactional documents between the applicant and the Debtors. The Debtors are indebted to the Applicant in the total outstanding amount of \$55,598,575 as of July 31, 2023. The Debtors granted the Applicant first-ranking security over substantially all of their Property. The Applicant has a contractual right to appoint a receiver in the event of defaults.
4. In addition to monetary defaults, the Applicant has detailed in its supporting evidence various other financial and operational defaults of the Debtors, including failing to pay rent and remit HST, failing to pay and remit taxes, incurring a large lien in respect of unpaid taxes, allegedly breaching an agreement with a key customer, failing to properly maintain books and records and failing to maintain insurance.
5. The Debtors' principals are alleged to have misappropriated and failed to return funds from a bank account with CIBC that the bank alleges they were erroneously granted access to, and allegedly failed to provide benefits and RRSP contributions to their unionized employees in accordance with a collective bargaining agreement. The Applicant has identified further concerns about the retention of senior management and employee. The allegations raise serious concerns about the stability of the Debtors.
6. Since early 2023, the Applicant has made numerous payments on behalf of the Debtors on account of critical items, in order to protect its collateral and minimize the risk of potential destabilization of the Debtors and their operations. Those payments included: (i) \$675,379.60 of insurance premiums that were required to prevent the Debtors' insurance coverage from lapsing; and (ii) \$745,990.78 of the Debtors' accounts payable, including for gas transportation services, gas procurement services, legal fees and information technology services. Those amounts were subsequently repaid to the Applicant on July 24, 2023 through a set-off.
7. After making efforts to accommodate the Debtors starting in early 2023, including by agreeing to enter into a forbearance agreement with the Debtors in February 2023, the situation arguably got worse, not better. The Applicant is no longer willing to continue deferring amounts due and payable and/or funding operational expenses in the absence of a court-supervised process.
8. The Applicant issued demand letters and notices of intention to enforce security pursuant to section 244 of the BIA first on June 9, 2023 addressing the immediate defaults. On June 9, 2023, the Applicant sent out notices of intention to enforce security pursuant to section 244 of the BIA giving notice to the Debtors of the Applicants' intention to enforce against security. New demands were sent out on July 24, 2023 for repayment of all rent and HST outstanding and accelerated, as of July 31, 2023. The proposed Receiver has proceeded cautiously and took the time to make arrangements with a licensed operator who can assume control of the Debtors' Property before bringing this application.
9. The Debtors asked for the receivership application to be adjourned for a few weeks to allow time for them to respond. They would also like to use that time to try to find an alternative source of debt and/or equity so that the Applicant can be repaid in full (something that they have been working on since the beginning of 2023, although they say there may be a recent development that gives them reason for greater optimism). They suggest that the Applicant has more than sufficient security for its debt and already has *de facto* control of the bank accounts and is, thus protected. Despite the ongoing dealings and demands and notices, the Debtors claimed that this application came out of the blue.
10. The Applicant does not agree that it has sufficient comfort from the security it has. By way of example, it points to a recent failed sales process that the Debtors undertook for the sale of one of the power plants

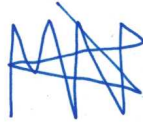
and the lack of liquidity or any market interest at least in that property. There are no valuations, which the Applicant in part blames upon the state of disarray of the Debtors' books and records.

11. The Applicant has made it known that one of its intended objectives in the receivership is a sale process and stalking horse bid for substantially all of the Debtors' assets, the terms of which the Debtors say they expect they will object to. A CCAA application is also contemplated. The SISP and CCAA application are matters that were not intended to be addressed at the time of the receivership application, but the prospect of them may be relevant.
12. They are entitled to respond to the application, but the time they ask for is too long having regard to the circumstances described by the Applicant in its supporting material. Given the seriousness of the allegations and the urgency of some of the circumstances described, but recognizing that the Debtors should be permitted to address these allegations if they can, the court granted a brief adjournment of this application to August 10, 2023, on terms which include an interim receivership order to allow the Receiver to gain access to information and documents and some additional insight and transparency into the records and operations of the business, without taking possession of the Property, and to provide some additional protections if, in the meantime, further funding advanced by the Applicant for operational needs.
13. Counsel for the Applicant and the Debtors were asked to work out the terms of this interim receivership order which they have now done. I am satisfied that the Applicant has sent the s. 244 notices and shown that it is necessary for the protection of the Debtors' estate for the benefit of all stakeholders, as well as the interests of the Applicant, such that the appointment of an interim receiver is appropriate under s. 47(1) of the BIA and that it is just and convenient for this interim receivership order to be granted pursuant to s. 101 of the *Courts of Justice Act*, pending the return of this application.
14. Given the short duration of this interim order, I am satisfied that the inclusion of the stay and requirement for services to be continued in favour of the Debtors is appropriate, as it is supported by the Applicant's record filed for the full receivership order and is important for the protection of the Debtors' estate in this interim period.
15. Some other secured creditors were identified by the Applicant. They were all given notice of this hearing and none appeared. The Applicant shall serve this endorsement and the order signed today on the service list, including but not limited to all secured creditors, and they shall have the opportunity to appear at the next attendance should they wish to do so.
16. The parties shall work out a timetable for the exchange of any additional material to be relied upon at the return of this application, all of which shall be served, filed and uploaded into CaseLines by no later than 2 p.m. on August 9, 2023. A copy of this endorsement shall also be uploaded into CaseLines by the Applicant.
17. Order to go in the form signed by me today.



KIMMEL J.

THIS IS **EXHIBIT “C”** REFERRED TO IN THE
AFFIDAVIT OF JOSHUA HAMILTON STEVENS,
AFFIRMED REMOTELY BY JOSHUA HAMILTON
STEVENS BEFORE ME *BY VIDEO CONFERENCE*,
THIS 8th DAY OF AUGUST, 2023.



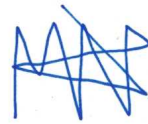
Michael Noel

Commissioner for Taking Affidavits

Validus Power Corp.
Payroll Liability Balances
October 2022 through July 2023

| | Oct 22 | Nov 22 | Dec 22 | Jan 23 | Feb 23 | Mar 23 | Apr 23 | May 23 | Jun 23 | Jul 23 | BALANCE |
|----------------------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|---------------------|
| Payroll Liabilities | | | | | | | | | | | |
| Federal Income Tax | 159,365.27 | 116,505.30 | 151,735.67 | 116,293.10 | 109,276.44 | 123,884.85 | 110,098.58 | 101,542.05 | 115,724.20 | 76,241.38 | 1,180,666.84 |
| CPP - Employee | 9,856.62 | 6,394.35 | 5,110.86 | 25,979.29 | 24,996.64 | 27,715.38 | 21,783.00 | 18,284.73 | 19,167.81 | 10,435.12 | 169,723.80 |
| CPP - Company | 9,856.62 | 6,394.35 | 5,110.86 | 25,979.29 | 24,996.64 | 27,715.38 | 21,783.00 | 18,284.73 | 19,167.81 | 10,435.12 | 169,723.80 |
| EI - Employee | 2,536.09 | 1,405.02 | 1,393.32 | 7,315.53 | 7,048.53 | 7,736.77 | 6,113.59 | 5,006.20 | 5,129.60 | 2,443.82 | 46,128.47 |
| EI - Company | 3,550.53 | 1,967.02 | 1,950.63 | 10,241.68 | 9,867.94 | 10,831.44 | 8,559.05 | 7,008.67 | 7,181.36 | 3,421.44 | 64,579.76 |
| Net Vacation Accrued | -11,529.79 | -5,601.66 | -18,915.53 | -18,160.03 | -3,972.76 | -5,973.99 | -5,498.50 | -1,386.47 | -9,512.14 | -20,430.79 | -100,981.66 |
| RRSP - 3.5% | 137.31 | 274.62 | 411.93 | 0.00 | 0.00 | 274.62 | 274.62 | 274.62 | 411.93 | 274.62 | 2,334.27 |
| RRSP - 8% | 15,586.75 | 15,358.07 | 21,964.28 | 0.00 | 0.00 | 15,401.20 | 15,259.84 | 15,087.57 | 21,009.90 | 13,723.95 | 133,391.56 |
| RRSP - Voluntary | 4,075.05 | 3,965.15 | 5,749.91 | 0.00 | 0.00 | 4,451.46 | 4,021.99 | 3,550.28 | 4,056.88 | 1,991.59 | 31,862.31 |
| RRSP 2 | 4,275.26 | 3,994.17 | 4,245.33 | 0.00 | 0.00 | 7,039.93 | 4,919.75 | 3,778.76 | 3,928.15 | 3,604.89 | 35,786.24 |
| RRSP deduction | 2,714.67 | 2,137.55 | 2,080.99 | 0.00 | 0.00 | 3,581.49 | 3,207.98 | 3,094.03 | 2,200.57 | 2,085.90 | 21,103.18 |
| Union Dues | 875.40 | 875.40 | 875.40 | 875.40 | 875.40 | 875.40 | 875.40 | 875.40 | 766.91 | 766.91 | 8,537.02 |
| RRSP - Company Contribution | 6,989.93 | 6,131.72 | 6,326.32 | 0.00 | 0.00 | 10,621.42 | 8,127.73 | 6,872.79 | 6,128.72 | 5,690.79 | 56,889.42 |
| RRSP Company - 3.5% | 137.31 | 274.62 | 411.93 | 0.00 | 0.00 | 274.62 | 274.62 | 274.62 | 411.93 | 274.62 | 2,334.27 |
| RRSP Company - 8 % | 14,924.74 | 14,724.35 | 21,013.70 | 0.00 | 0.00 | 14,739.19 | 14,597.83 | 14,453.85 | 21,009.90 | 13,723.95 | 129,187.51 |
| RRSP Company 8% | 662.01 | 633.72 | 950.58 | 0.00 | 0.00 | 662.01 | 662.01 | 633.72 | 0.00 | 0.00 | 4,204.05 |
| Total Payroll Liabilities | 224,013.77 | 175,433.75 | 210,416.18 | 168,524.26 | 173,088.83 | 249,831.17 | 215,060.49 | 197,635.55 | 216,783.53 | 124,683.31 | 1,955,470.84 |

THIS IS **EXHIBIT “D”** REFERRED TO IN THE
AFFIDAVIT OF JOSHUA HAMILTON STEVENS,
AFFIRMED REMOTELY BY JOSHUA HAMILTON
STEVENS BEFORE ME *BY VIDEO CONFERENCE*,
THIS 8th DAY OF AUGUST, 2023.



Michael Noel

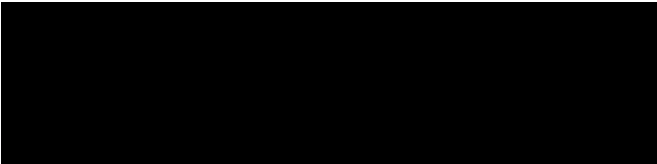
Commissioner for Taking Affidavits




**SUMMARY OF TERMS FOR A SENIOR SECURED CREDIT FACILITY (the "TERM SHEET")
(FOR DISCUSSION PURPOSES ONLY)**

DATE: February 28, 2023

TO: Craig Tavares
COO and CTO
Validus Power Corp.
100 Wellington St. W, 23rd Floor
Toronto, ON, M5J 2R2

FROM: 


We are pleased to provide this Term Sheet to Validus Power Corp. outlining the terms and conditions under which  would consider providing the proposed senior secured facility as set out herein.

This summary of terms and conditions is for convenience of reference only and shall not be considered to be exhaustive as to the final terms and conditions of the Credit Facility, which shall be set out in the Credit Facility Agreement (as defined below). In the event of a conflict between this Term Sheet and the Credit Facility Agreement, the latter shall govern. All amounts referred to herein are in Canadian dollars.

Borrower: Validus Power Corp., Kingston CoGen GP Inc., and Kingston CoGen Limited Partnership (together the "**Borrower**")

Corporate Guarantors: All of Validus Power Corp.'s material subsidiaries, including Bay Power Corp., Kap Power Corp., Iroquois Falls Power Corp., Validus Power Services Inc., Validus Hosting Inc., Validus Digital Inc., Validus Solutions Inc. (together the "**Corporate Guarantors**")

Personal Guarantor: A \$2,000,000 limited personal guarantee from Todd Shortt (the "**Personal Guarantor**") and together with the Corporate Guarantors, the "**Guarantors**")

Lender:  (the "**Lender**")

Credit Facility: A senior secured 1st lien credit facility comprised of: i) Tranche A – a committed delayed draw term loan facility for \$5,000,000 to be used to provide the Borrower with up to \$225,000 to pay any priority payables associated with the Kingston power plant (i.e. CRA arrears, property tax arrears and workman's liens, etc.); \$725,000 to finance the balance of the Commitment Fee; up to \$50,000 to cover the Lender's legal fees and due diligence costs and expenses; and a minimum of \$4,000,000 for working capital and general corporate purposes; and (ii) Tranche B – an uncommitted accordion term loan facility for up to \$5,000,000,

subject to the Lender obtaining credit approval for such incremental financing (the "**Credit Facility**").

Maximum Availability: The amount advanced by the Lender under Tranche A and Tranche B of the Credit Facility shall not, at any time, exceed \$5,000,000 under each respective tranche (the "**Maximum Availability**").

Documentation: Any commitment by the Lender in respect of the Credit Facility would be subject to the negotiation, execution and delivery of a credit agreement containing the terms and conditions outlined herein, as well as standard representations and warranties, conditions precedent, affirmative and negative covenants, events of default, and other clauses usual and customary for a financing of this nature (the "**Credit Facility Agreement**") and such other documents as are customary for a financing of this nature, including without limitation, guarantees and security documents.

Security: The obligations of the Borrower under the Credit Facility Agreement are to be secured by:

- A first-ranking General Security Agreement over all of the Borrower's present and after acquired assets, including real property, machinery and equipment, accounts receivables and inventory, evidenced by applicable PPSA registrations;
- A second-ranking General Security Agreement over all of the Guarantors' present and after acquired assets, including real property, machinery and equipment, accounts receivables and inventory, evidenced by applicable PPSA registrations;
- A first-ranking specific charges on the Borrower's machinery and equipment assets supported by clear evidence of title and applicable PPSA registrations;
- First-ranking mortgage charges on the power plant and real property owned by Kingston CoGen Limited Partnership;
- Second-ranking mortgage charges on the power plants and real property owned by Bay Power Corp., Kap Power Corp., and Iroquois Falls Power Corp.
- Intercreditor Agreements acceptable to the Lender with Macquarie Equipment Finance and the Borrower's operating lender (if any);
- Subordination and postponement of all shareholder and intercompany loans;
- An assignment of the Borrower's "all risk" and general liability insurance policy, which shall include the Borrower's insurance coverage on the Kingston power plant, along with all the Borrower's machinery and equipment assets, which name the Lender as a first loss payee and an additional insured;
- An assignment of the Corporate Guarantors' "all risk" and general liability insurance policies, which shall include the Corporate Guarantors' insurance coverage on the North Bay power plant, Kapuskasing power plant, and Iroquois Falls Power Corp. power plant, along with all the Corporate Guarantors' machinery and equipment assets, which name the Lender as a second loss payee and an additional insured;
- Blocked Account Agreements over the Borrower's bank accounts; and
- Any other charge as may be required in order to perfect the security interests of the Lender as determined by its solicitors (together, the "**Security**").

Availability: Subject to the Maximum Availability, and provided that no Default or Event of Default (as defined in the Credit Facility Agreement) has occurred and is then continuing, on or after the date on which the Conditions Precedent shall have been satisfied, the Borrower may request the advancement of Tranche A under Credit Facility.

Term: The maturity of the Credit Facility shall be 12 months from the date of the initial advance (the "**Maturity Date**").

Closing Date: Tranche A - The date on which the Conditions Precedent detailed herein shall have been satisfied and the initial advance under Tranche A has been made by the Lender (the "**Closing Date**"). The commitment (if any) of the Lender to make available Tranche A shall expire and terminate if the Closing Date has not occurred on or before March 31, 2023, or such later date as the Lender may approve.

Tranche B - To be determined, subject to credit approval.

Interest Rate: Tranche A - Prime + 9.55% per annum, where "Prime" is defined as the Royal Bank of Canada's prime rate for Canadian dollar transactions.

Tranche B - To be determined, subject to credit approval.

Term Sheet Issuance Fee: Subject only to the Borrower's written agreement and confirmation by email to the general terms and conditions contained in this Term Sheet, the Borrower shall pay to the Lender's parent, [REDACTED], a Term Sheet issuing fee in an amount of \$75,000 (the "**Term Sheet Issuance Fee**"), to induce the Lender to issue the Term Sheet. The Term Sheet Issuance Fee shall be non-refundable, fully earned and payable no later than February 28, 2023.

Commitment Fees: The Borrower shall pay a commitment fee on Tranche A in an amount of \$750,000 (the "**Commitment Fee**"). The Commitment Fee shall be non-refundable, fully earned and payable no later than the Closing Date. Of this Commitment Fee, \$25,000 is to be paid in advance on acceptance of this Term Sheet (the "**Good Faith Deposit**") and will be credited towards the Commitment Fee due and payable on the Closing Date and the balance of the Commitment Fee (\$725,000) will be financed by the Lender. Should the Lender upon completion of its due diligence, decide in its sole discretion not to provide the Borrower with a commitment substantially in the form outlined herein, the Lender will return to the Borrower the Good Faith Deposit less any due diligence costs incurred by the Lender (i.e. appraisal fees, consulting fees, travel expenses, legal fees, etc.).

Payments: Tranche A - The facility will be serviced by 6 months of interest-only payments followed by 5 payments of interest and principal based on a 36-month amortization (i.e. monthly principal installments of \$138,888.89), with the remaining principal and outstanding interest, fees and expenses due on the Maturity Date.

Tranche B - Debt service to be determined, subject to credit approval.

Prepayments: The Credit Facility may be prepaid in whole at any time after 9-months subject to the following prepayment penalties:

2.00% on the outstanding loan balance if prepaid after 9 months;

1.50% on the outstanding loan balance if prepaid after 10 months; and
1.00% on the outstanding loan balance if prepaid after 11 months but prior to the Maturity Date;

Covenants:

The Credit Facility Agreement would contain certain affirmative, negative and financial covenants, including without limitation, the following:

- The Borrower shall not undertake any actions with respect to their business operations and/or capital structure which would, in the determination of the Lender, have a material adverse effect on the Borrower;
- The Borrower shall not incur, create or suffer to exist any lien on any Security now owned or hereafter acquired other than Permitted Encumbrances (as defined in the Credit Facility Agreement);
- Without the prior written consent of the Lender, the Borrower shall not declare any dividends, or make any other distributions (whether by reduction of capital or otherwise) with respect to any of their issued and outstanding shares or other equity interest; and
- The Borrower shall pay all reasonable fees, expenses and costs incurred by the Lender, in connection with the Credit Facility.

Conditions Precedent to Closing:

- A physical inspection of the Kingston power plant by the Lender;
- A satisfactory opinion of value on the power plant and the key power generating equipment assets (i.e. turbines and generators) at the Borrower's plant in Kingston by a consultant engaged by the Lender;
- Execution of the Credit Facility Agreement;
- Evidence of clean environmental reports on the Borrower's Kingston power plant, with transmittal letters addressed to the Lender (if required);
- Perfected security interests in the Security with the priorities described above, together with the execution and delivery of security documentation and perfection filing from the Lender by the Closing Date;
- Satisfactory completion of the Lender's review of the Security, including evidence that the Borrowers have good title to the subject equipment and real property assets;
- Delivery of all guarantees, subordination and postponement agreements and intercreditor agreements;
- Evidence of the Borrower and Guarantor's receipt of the IESO's full capacity payments, in respect of the power plants in Kingston and Iroquois Falls, for the months of January, February and March 2023 (i.e. the capacity payments to be received by the Borrower in mid-January, mid-February and mid-March 2023);
- Evidence of no outstanding priority claims (i.e. CRA arrears, property taxes, contractor workman's liens, etc.) over the Borrower's assets;
- Evidence of no active material lawsuits against the Borrower, with the exception of the Hut 8 litigation which has already been disclosed by the Borrower;
- No material adverse change to the Borrower's business shall have occurred prior to Closing as a direct result of the Hut 8 litigation;
- Maynbridge and its consultant must be satisfied with all the maintenance and service records and the remaining useful life of the turbines and generators at the Kingston power plant;
- Receipt by the Lender, of an initial monthly cash flow forecast for the upcoming 12-month period (the "**Cash Flow Forecast**"), satisfactory to the Lender;
- The Borrower shall have paid all fees then owing to the Lender; and

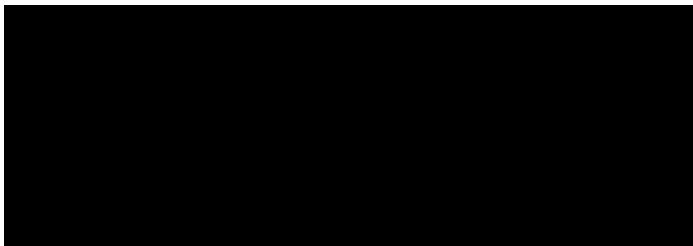
- Completion by the Lender of all business, financial, legal and environmental due diligence with respect to the Borrowers and Guarantors.

| | |
|--|---|
| Reporting: | The Credit Facility Agreement would contain regular quarterly reporting requirements, including without limitation, the following: <ul style="list-style-type: none"> • Monthly company prepared financial statements, including profit & loss, balance sheet, schedule of accounts receivable and accounts payable; • Monthly statement of account from the Receiver General (screen print) supporting all priority payables are in good standing and up to date; • Quarterly company prepared financial statements within 60 days of the Borrower's quarter end; • Annual audited financial statements to be delivered within 120 days of the Borrower's year end; and • Monthly Compliance Certificate. |
| Representations and Warranties: | Standard Representations and Warranties for a loan transaction of this nature. |
| Events of Default: | Standard Events of Default for a loan transaction of this nature. |
| Transaction Expenses: | From the date of acceptance of this Term Sheet, the Borrower will be responsible for all reasonable third-party expenses incurred by the Lender in connection with the transaction, including, but not limited to, legal fees (on a solicitor and own client full indemnity basis), appraisals, due diligence and physical inspections. |
| Assignability: | The Borrower and the Guarantors may not assign any of their rights or obligations. The Lender may assign or transfer, in whole or in part, its rights or pledge its rights thereunder without the consent of the Borrower and the Guarantors. |
| No Obligation Created: | By executing this Term Sheet, you acknowledge that it represents a proposed transaction and does not constitute in any way an offer or a commitment from the Lender. |
| Confidential: | This Term Sheet is being provided to you on the further condition that its existence and contents will be kept confidential and will not be disclosed to any person without the Lender's prior written consent, except to those individuals who have a "need to know" as a result of being specifically involved in the proposed transaction. |
| Governing Law: | This Term Sheet is governed by and interpreted in accordance with the laws of the Province of Ontario and the Borrower and the Guarantors hereby irrevocably attorn to the jurisdiction of the courts of the Province of Ontario. |
| Counterpart Execution: | This Term Sheet and all other documents related thereto or arising there from may be executed in any number of counterparts (including by facsimile transmission) and by different parties in separate counterparts, each of which when so executed will be deemed to be an original and all of which taken together will constitute one and the same instrument. |

This Term Sheet is open for acceptance by the Borrower until 12:00 p.m. Eastern Time on March 1, 2023, or such later time approved by the Lender.


Please feel free to contact the undersigned if you have any questions or concerns.

Yours truly,




ACCEPTED this 1st day of March 2023.


VALIDUS POWER CORP.

By: 
Name: Todd Shortt
Title: President & CEO
I have authority to bind the Corporation

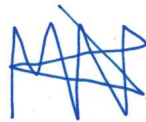
KINGSTON COGEN GP INC.

By: 
Name: Todd Shortt
Title: President & CEO
I have authority to bind the Corporation

KINGSTON COGEN LIMITED PARTNERSHIP

By: 
Name: Todd Shortt
Title: President & CEO
I have authority to bind the Corporation

THIS IS **EXHIBIT “E”** REFERRED TO IN THE
AFFIDAVIT OF JOSHUA HAMILTON STEVENS,
AFFIRMED REMOTELY BY JOSHUA HAMILTON
STEVENS BEFORE ME *BY VIDEO CONFERENCE*,
THIS 8th DAY OF AUGUST, 2023.



Michael Noel
Commissioner for Taking Affidavits

From: Craig Tavares <craig.tavares@validuspower.com>
Sent: Sunday, March 5, 2023 5:39 PM
To: Nasr Jeries; Joshua Stevens
Cc: Todd Shortt; Doug Konno
Subject: FW: Revised [REDACTED] Term Sheet
Attachments: Validus Power [REDACTED] Term Sheet_February 28, 2023_FINAL_[REDACTED].Sig.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

External Communication

Nasr, Josh,
Sharing the updated [REDACTED] Term Sheet ahead of our call tomorrow. As agreed to previously, [REDACTED] is only looking to take a senior position on Kingston and second on any of the other Validus entities. They recognize time is of the essence and asking Macquarie to provide a satisfactory inter-creditor agreement to ensure we can fund before the end of the month. They believe if we want to get through this quickly, using Macquarie's template will be easier from an alignment perspective to avoid too much back and forth.

Thanks,
Craig

From: Todd Shortt <todd.shortt@validuspower.com>
Date: Wednesday, March 1, 2023 at 10:23 AM
To: Craig Tavares <craig.tavares@validuspower.com>
Subject: Fwd: Revised [REDACTED] Term Sheet

Signed

Todd Shortt
President & CEO
Mobile: 705.493.4448
Email: todd.shortt@validuspower.com

THIS IS **EXHIBIT “F”** REFERRED TO IN THE
AFFIDAVIT OF JOSHUA HAMILTON STEVENS,
AFFIRMED REMOTELY BY JOSHUA HAMILTON
STEVENS BEFORE ME *BY VIDEO CONFERENCE*,
THIS 8th DAY OF AUGUST, 2023.



Michael Noel

Commissioner for Taking Affidavits

From: Jatinder Wadhwa <Jatinder.Wadhwa@ca.ey.com>
Sent: Wednesday, June 14, 2023 10:18 AM
To: Hugh Anstey; James Roberts; Tom Wood (CGM); Yining Yuan; Joshua Stevens; Craig Tavares; Ryan Chua
Cc: Alex Morrison; Michael Hayes; Cecilia Wang
Subject: RE: Project Turbo update

Follow Up Flag: Follow up
Flag Status: Flagged

External Communication

All,

Quick update on Northland Power. Mike has confirmed that their interest is only pursuing a potential buyback of the Kingston facility as he has a business case to support. He has asked if this is of interest.

For Iroquois Falls, he doesn't not have any business case or internal support. I also asked him about potentially partnering up with a mining company. He was pretty clear that it would not be of interest as miners like to have a very low cost for the power and that is not a business model they want to get into.

Also, I have spoken to 2140 and indicated that we would need a deposit at the very least. On the call, they reiterated that they will be able to meet the timelines in the offer (which is 2 weeks from acceptance for a deposit).

Macquarie team – I know some of you are traveling but let us know when you are available to have quick discussion on next steps.

Regards,
Jatinder

Jatinder Wadhwa | Partner/Principal | TCF-Lead Advisory
Ernst & Young LLP
Cell:4166693073| Jatinder.Wadhwa@ca.ey.com

From: Hugh Anstey <Hugh.Anstey@macquarie.com>
Sent: Monday, June 12, 2023 2:29 PM
To: Jatinder Wadhwa <Jatinder.Wadhwa@ca.ey.com>; James Roberts <James.Roberts@macquarie.com>; Tom Wood (CGM) <Thomas.Wood@macquarie.com>; Yining Yuan <Yining.Yuan@macquarie.com>; Joshua Stevens <Joshua.Stevens@macquarie.com>; Craig Tavares <craig.tavares@validuspower.com>; Ryan Chua <ryan.chua@validuspower.com>
Cc: Alex Morrison <Alex.F.Morrison@parthenon.ey.com>; Michael Hayes <Michael.Hayes@parthenon.ey.com>; Cecilia Wang <Cecilia.Wang@ca.ey.com>
Subject: RE: Project Turbo update

Hi Jatinder,

Sounds like there could potentially be something with Northland.

Did you give Northland/Cipher a timeline of when they need to come to a decision?

This will be important so we can have a view on 2140.

Thanks, Hugh

From: Jatinder Wadhwa <Jatinder.Wadhwa@ca.ey.com>

Sent: Monday, June 12, 2023 1:51 PM

To: James Roberts <James.Roberts@macquarie.com>; Tom Wood (CGM) <Thomas.Wood@macquarie.com>; Hugh Anstey <Hugh.Anstey@macquarie.com>; Yining Yuan <Yining.Yuan@macquarie.com>; Joshua Stevens <Joshua.Stevens@macquarie.com>; Craig Tavares <craig.tavares@validuspower.com>; Ryan Chua <ryan.chua@validuspower.com>

Cc: Alex Morrison <Alex.F.Morrison@parthenon.ey.com>; Michael Hayes <Michael.Hayes@parthenon.ey.com>; Cecilia Wang <Cecilia.Wang@ca.ey.com>

Subject: Project Turbo update

External Communication

All,

We had calls with both Maxim Power and Northland Power this morning and below are the notes from the call. We will let you know as soon as we hear back from Northland Power.

We plan to have a call with 2140 and emphasize need for deposit and financing plan for the acquisition.

Northland Power (Mark Airhart):

- They are interested in Kingston but Mark will check the appetite if they would be interested in IFPC. He indicated that they would not be interested in IFPC only
- From a value perspective, they will not pay more than what they sold it and likely less given reputational damages with suppliers/employees and the liens that have been put on
- They can move quickly given they know the assets pretty well but need to discuss up the chain whether IFPC would be of interest
- Mark will get back to us within the next few days

Maxim Power (Kyle Mitton)

- They are current looking for opportunity to grow but primarily in the Alberta Market
- They have spoken to miners in the past and are skeptical about partnership opportunities given the pricing expectation spread
- For IFPC, they don't think a partnership would make sense given they are (a) Alberta focused, and (b) unfamiliarity with regulatory / power market in Ontario
- They would be interested in purchasing equipment, and relocating to Alberta and installing it there and provided a guidance of valuation in the 10-12mm range
 - o They have current regulatory approvals and permit to build a similar plant in Alberta and hence the interest in equipment
- We did indicate to Kyle that this is not what is being considered at this time

Regards,
Jatinder



Jatinder Wadhwa | Partner/Principal | TCF-Lead Advisory

Ernst & Young LLP
EY Tower 100 Adelaide St W, Toronto, ON, M5H 0B3, Canada
Cell: 4166693073 | Jatinder.Wadhwa@ca.ey.com
Website: www.ey.com
Aminah Ahmad | 4169433275 | aminah.ahmad@ca.ey.com

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Michael Noel
Commissioner for Taking Affidavits

From: Craig Tavares <craig.tavares@validuspower.com>
Sent: Friday, December 9, 2022 12:45 AM
To: Nasr Jeries
Cc: Todd Shortt
Subject: IESO results
Attachments: 20221208_2022 Capacity Auction_ Post-Auction Report.pdf; Decarbonization-and-Ontarios-Electricity-System.pdf; Kingston Cogen Limited Partnership_E-020.pdf; Bay Power Corp_E-006.pdf

External Communication

Hi Nasr,
Todd asked me to share the IESO CA and RFP results with you.

1. **Capacity Auction:** all 4 Validus sites have been accepted into the CA for 2023-2024. The clearing prices have been published at \$314 for summer and \$141 for winter, up from \$260 and \$60 respectively in the previous year. This signals an urgent need for capacity in the summer but now an even larger need in the winter months where historically it was not the case.
2. **Long term RFP (Expansion stream):** North Bay and Kingston were pre-approved to enter into the Expansion RFP through a 'deliverability test' or transmission capacity validation. Validus can expand up to 35 MW in North Bay and another 500 MW in Kingston although it will likely be phased in due to transmission contention in the area.


The pre-approval for the E-RFP deliverability test confirm IESO's need for more generation both short term and long term.

Lastly, I attached the formal report from the IESO confirming we do in fact need an increased amount of Natural Gas generation to stabilize the grid amidst any of the net zero targets:
"Analysis shows that a complete phase-out of gas generation by 2030 would lead to blackouts, as electricity would not always be available where and when needed. Gas generation offers a set of services, including quick response time and availability, that keep the grid reliable and help balance the variability of wind and solar output." IESO

The IESO will be adding another 1.5GW of natural gas to the procurement process immediately because of this report. Also, see page 10 of the report that shows peak demand forecast for Ontario.

Craig Tavares
COO and CTO, Validus Power Corp.
Mobile 416.509.2208
Email Craig.Tavares@Validuspower.com

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Connecting Today.
Powering Tomorrow.

Independent Electricity System Operator

1600-120 Adelaide Street West
Toronto, ON M5H 1T1
t 416.967.7474

www.ieso.ca

June 9, 2023

Capacity Auction Contact
Kap Power Corp.
100 Wellington Street West, Toronto, ON
M5J 2R2

SENT VIA EMAIL TO CAPACITY AUCTION CONTACT:

Ryan Forget (ryan.forget@validuspowers.com)
Ian Kowalski (ian.kowalski@validuspowers.com)

Re: Forfeiture of Capacity Auction Deposit and Capacity Obligation from the December 2022 Capacity Auction

The IESO confirms that Kap Power Corp ("KAPPC") must forfeit its *capacity auction deposit* and *capacity obligation* for the Summer 2023 *obligation period* pursuant to section 18.4.4 of Chapter 7 of the *market rules*, as a result of KAPPC not satisfying the applicable eligibility requirements, nor electing to buy-out its *capacity obligation*, by the start of the Summer 2023 *obligation period*.

KAPPC participated in the December 2022 Capacity Auction (the "Auction"). In advance of participating in the Auction, KAPPC provided the IESO with \$37,077 as its *capacity auction deposit* for the Summer 2023 *obligation period* (the "Deposit"). In the Auction, KAPPC secured the *capacity obligation* of 19 MW in the Northeast Zone (obligation ID 10341) (the "Obligation").

On May 1, 2023, the start of the Summer 2023 *obligation period*, KAPPC had not satisfied the applicable eligibility requirements in respect of its Obligation by failing to demonstrate to the IESO that it can provide the Obligation as specified in the applicable *market manual*, nor had it elected to buy-out its Obligation. Specifically, KAPPC failed to complete the requirements to return to service.

An invoice for the amount of the Deposit will be sent to you shortly and the IESO will use the Deposit on account to satisfy the invoice.

Yours truly,

A handwritten signature in blue ink that reads "Dale Fitzgerald".

Dale Fitzgerald
Supervisor, Capacity Auction

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Michael Noel
Commissioner for Taking Affidavits

From: Yining Yuan <Yining.Yuan@macquarie.com>
Sent: Wednesday, July 19, 2023 4:25 PM
To: Joshua Stevens; Nasr Jeries; James Roberts; Ronnie Alam; Tom Wood (CGM); Hugh Anstey
Subject: RE: Kap Power Corp Deposit and Obligation Forfeiture for 2023 Summer Obligation
Attachments: Kap Power 2023 Summer Capacity Obligation.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Please see the email below and the attached letter from IESO, regarding IESO's forfeiture of Kap's summer 2023 capacity obligations (May 1 – Oct 30, 2023).

Both Kap and Bay still have their Winter 2023 / 2024 capacity obligations (Nov 1, 2023 – Apr 30, 2024) registered with IESO. The plan now is to transfer these obligations to other IESO physical capacity market participants. The deadline for such a transfer is Oct 12, 2023. I am waiting to hear back from Craig before reaching out to potential counterparties to arrange the transfer and will keep everyone posted.

Thank you,
Yining

From: Yining Yuan <Yining.Yuan@macquarie.com>
Sent: Tuesday, June 13, 2023 1:00 PM
To: Joshua Stevens <Joshua.Stevens@macquarie.com>; Nasr Jeries <Nasr.Jeries@macquarie.com>; James Roberts <James.Roberts@macquarie.com>; Ronnie Alam <Ronnie.Alam@macquarie.com>; Tom Wood (CGM) <Thomas.Wood@macquarie.com>; Hugh Anstey <Hugh.Anstey@macquarie.com>
Subject: Fwd: Kap Power Corp Deposit and Obligation Forfeiture for 2023 Summer Obligation

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From: Ryan Forget <ryan.forget@validuspower.com>
Sent: Tuesday, June 13, 2023 4:25:07 PM
To: Yining Yuan <Yining.Yuan@macquarie.com>; Craig Tavares <craig.tavares@validuspower.com>; Doug Konno <doug.konno@validuspower.com>; Shelley Goertz <shelley.goertz@validuspower.com>
Subject: FW: Kap Power Corp Deposit and Obligation Forfeiture for 2023 Summer Obligation

External Communication

Hi Everyone,

I'm forwarding the letter and message below that I got from IESO yesterday regarding the Kap capacity auction obligation that was secured in the last auction. The IESO has determined that the obligation and deposit has been forfeited by not being available for the start of the period. I do have a follow up question in to them though because we did post the LC for prudential support and I believe Shelley requested the auction deposit back but I'm not 100% sure. In any case, my question is what happens if the LC has been posted, will they just take the \$37k from there and VPC can get

the balance back? This is good news in the sense that Kap Power will not incur penalties on a go forward basis but it also means there's no opportunity to transfer the obligation.

I'll forward any response I get from IESO regarding the money they're going to keep and how they're going to do it.

Thanks,

Ryan

From: Capacity Auction <Capacity.Auction@ieso.ca>

Sent: Monday, June 12, 2023 3:40 PM

To: Ryan Forget <ryan.forget@validuspower.com>; Ian Kowalski <Ian.Kowalski@validuspower.com>

Cc: Dale Fitzgerald <Dale.Fitzgerald@ieso.ca>

Subject: Kap Power Corp Deposit and Obligation Forfeiture for 2023 Summer Obligation

Some people who received this message don't often get email from capacity.auction@ieso.ca. [Learn why this is important](#)

Hi Ryan and Ian,

We have determined that Kap Power Corp's capacity obligation and capacity auction deposit associated with the 2023 summer obligation period shall be forfeited pursuant to section 18.4.4 of Ch. 7 of the Market Rules. Please find attached the letter regarding this forfeiture.

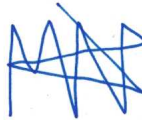
Any amount of capacity auction deposit that remains after the forfeiture can be returned to Kap Power Corp. upon request or form part of the deposit for participation in subsequent capacity auctions as per section 18.3.3 of Ch. 7.

Regards,

The Capacity Auction Team

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Michael Noel

Commissioner for Taking Affidavits



Profile Report

2308189 ONTARIO INC. as of June 28, 2023

| | |
|-----------------------------------|---|
| Act | Business Corporations Act |
| Type | Ontario Business Corporation |
| Name | 2308189 ONTARIO INC. |
| Ontario Corporation Number (OCN) | 2308189 |
| Governing Jurisdiction | Canada - Ontario |
| Status | Active |
| Date of Incorporation | December 05, 2011 |
| Registered or Head Office Address | 1500 Sandhill Drive, 2b, Ancaster, Ontario, Canada, L9G 4V5 |

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

V. Quintanilla W.

Director/Registrar

This report sets out the most recent information filed on or after June 27, 1992 in respect of corporations and April 1, 1994 in respect of Business Names Act and Limited Partnerships Act filings and recorded in the electronic records maintained by the Ministry as of the date and time the report is generated, unless the report is generated for a previous date. If this report is generated for a previous date, the report sets out the most recent information filed and recorded in the electronic records maintained by the Ministry up to the "as of" date indicated on the report. Additional historical information may exist in paper or microfiche format.

Active Director(s)

Minimum Number of Directors 1
Maximum Number of Directors 5

Name SANDRA WATT
Address for Service 1500 Sandhill Drive, Ancaster, Ontario, Canada, L9G 4V5
Resident Canadian Yes
Date Began December 05, 2011

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Director/Registrar

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Active Officer(s)

| | |
|----------------------------|---|
| Name | SANDRA WATT |
| Position | President |
| Address for Service | 1500 Sandhill Drive, Ancaster, Ontario, Canada, L9G 4V5 |
| Date Began | December 05, 2011 |

| | |
|----------------------------|---|
| Name | SANDRA WATT |
| Position | Secretary |
| Address for Service | 1500 Sandhill Drive, Ancaster, Ontario, Canada, L9G 4V5 |
| Date Began | December 05, 2011 |

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V. Quintanilla W.

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Corporate Name History

Name

2308189 ONTARIO INC.

Effective Date

December 05, 2011

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V. Quintanilla W.

Director/Registrar

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Active Business Names

This corporation does not have any active business names registered under the Business Names Act in Ontario.

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Expired or Cancelled Business Names

| | |
|---|--------------------|
| Name | POWER CONSULTING |
| Business Identification Number (BIN) | 241162700 |
| Status | Inactive - Expired |
| Registration Date | December 05, 2014 |
| Expired Date | December 04, 2019 |

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Document List

| Filing Name | Effective Date |
|--|-------------------|
| CIA - Initial Return PAF: SHELLEY HOFFNER - OTHER | December 21, 2016 |
| BCA - Articles of Incorporation | December 05, 2011 |

All "PAF" (person authorizing filing) information is displayed exactly as recorded in the Ontario Business Registry. Where PAF is not shown against a document, the information has not been recorded in the Ontario Business Registry.

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Business Debtor Enquiry


File Currency: **27JUN 2023**

**Search Criteria: 2308189 ONTARIO INC.
No Match.**

No registered financing statement or registered claim for lien was found for this enquiry.

[New Enquiry](#)

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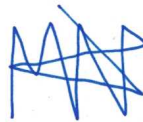
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THIS 8th DAY OF AUGUST, 2023.



Michael Noel
Commissioner for Taking Affidavits

AGREEMENT OF PURCHASE AND SALE

This Agreement is made as of 27th day of March, 2023.

B E T W E E N:

INVISTA (CANADA) COMPANY
(hereinafter called the “**Vendor**”)

OF THE FIRST PART

and

2308189 ONTARIO INC.
(hereinafter called the “**Purchaser**”)

OF THE SECOND PART

This Agreement witnesses that in consideration of the mutual covenants and agreements herein contained, the parties agree one with the other as follows:

1. Definitions

1.1 The parties hereto agree that, when used in this Agreement the following words or expressions, when capitalized, shall have the meaning hereinafter set forth:

- (a) “**Business Day**” means Monday to Friday, both inclusive, except any such day which is a statutory holiday under the laws of either Canada or the Province of Ontario;
- (b) “**Claims**” means all claims, suits, proceedings, liabilities, obligations, losses, damages, penalties, judgments, prosecutions, orders, suits, actions, costs, expenses, fines, disbursements, legal fees on a solicitor and client basis, interest, demands and actions of any nature or kind whatsoever;
- (c) “**Closing**” has the meaning ascribed thereto in Section 8.2;
- (d) “**Closing Date**” means June 15, 2023;
- (e) “**Closing Documents**” means those documents listed in Section 10;
- (f) “**CPU**” means either of the Certificate of Property Uses No. 6676-9CWHB7-1N issued by the Ministry of the Environment on March 20, 2014 with respect to 5275 Bath Road, Highway No. 22, Loyalist Township, Ontario or No. 6676-9CWHB7-2S issued by the Ministry of the Environment on March 20, 2014 with respect to 5275 Bath Road, Highway No. 22, Loyalist Township, Ontario.
- (g) “**Delivery Materials**” has the meaning ascribed thereto in Section 4.1(a);

- (h) **“Due Diligence Date”** means the Execution Date;
- (i) **“Execution Date”** means the date of execution and delivery of this Agreement by both the Purchaser and the Vendor;
- (j) **“Environment”** means the environment or natural environment including air, surface, water and groundwater (including sea water, freshwater, potable water, navigable water, shorelands and wetlands), soil, the land surface and subsurface strata or other environmental media, natural resources and as additionally defined in any Environmental Laws, and it includes organic and inorganic matter and living organisms and any sewer or drainage or discharge systems;
- (k) **“Environmental Laws”** means all applicable federal, state, provincial, local, municipal and foreign law, all common law, statute, directive, regulation, ordinance, code, constitution, treaty, legal requirement or administrative or judicial order or determination, or binding agreement with any Governmental Authority, relating to: (i) any Hazardous Material or any activity, incident, event or occurrence involving Hazardous Material, including the use, manufacture, possession, storage, holding, presence, existence, Release, threatened Release, generation, transportation, import, export, distribution, labeling, processing, construction, treatment, abatement, removal, remediation, disposal, disposition or handling of any Hazardous Material, and any corrective action or response with respect to any of the foregoing; (ii) the protection and preservation of the Environment and of plant, animal, fish or human health; or (iii) otherwise imposing liability or standards of conduct concerning the protection and preservation of the Environment and of plant, animal, fish or human health, including all with respect to monitoring, record-keeping, notification, disclosure and reporting relating to clauses (i), (ii) and/or (iii) and all permits, licences, certifications and other types of authorizations issued or required to be issued pursuant to such laws and legal requirements relating to clauses (i), (ii) and (iii);
- (l) **“Governmental Authority”** means any governmental authority, whether local, municipal, regional or provincial, and any agency, authority, instrumentality, regulatory body, court, tribunal, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory, criminal, quasi-criminal or administrative powers or functions of or pertaining to government;
- (m) **“Hazardous Materials”** means any solid, liquid, gas, emission, odour, heat, sound, vibration, radiation, element, noise, dust, smoke, material, substance, chemical, products, compound, particulate or any derivative or combination of the foregoing that may impair or adversely affect the Environment, injure or damage property or plant or animal life or harm, impair or adversely affect the enjoyment of property or the health of any individual and includes any waste, petroleum, petroleum constituents, petroleum products, radioactive materials or wastes, asbestos containing material, greenhouse gases, polychlorinated biphenyls, urea formaldehyde foam insulation, radon gas, fluorinated chemical substances, chemical substances in the per- and polyfluoroalkyl substances (PFAS) family

including precursor compounds that can transform to create perfluorinated alkyl acids (PFAAs), organoflourines, perfluorinated compounds (PFCs), perfluorooctane sulfonate (PFOS), perfluorinated alkyl compounds, perfluorinated alkyl acids (PFAAs), perfluoroalkyl carboxylates (PFCAs), perfluoroalkane sulfonates (PFSAs), and any substance, compound or derivative defined, regulated, prohibited, prescribed, limited or prohibited by a Governmental Authority or any Environmental Laws or which is otherwise characterized under or pursuant to any Environmental Laws as “hazardous”, “deleterious”, “dangerous”, “waste”, “toxic”, “pollutant”, “contaminant”, “radioactive”, “harmful”, “deleterious” or words of similar meaning;

- (n) **“Municipal Infrastructure”** means infrastructure required for development purposes, or the purposes, objectives or requirements of a municipal Governmental Authority, including without limitation, roads, sewers, water services, storm sewers and hydro;
- (o) **“Parties”** means the Vendor and the Purchaser;
- (p) **“Permitted Encumbrances”** means those encumbrances more particularly described in Schedule “B” attached hereto;
- (q) **“Real Property”** means the lands to be purchased by the Purchaser from the Vendor as more particularly described in Schedule “A” attached hereto (including any subsurface rights of the Vendor with respect thereto), which for greater certainty, shall exclude all existing buildings and structures erected thereon with the exception of the pumphouse and substation and related transformers located on the Real Property; and
- (r) **“Release”** means any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, depositing, disposing, dispersing, spraying, abandoning, throwing, placing, exhausting of a Hazardous Material, and when used as a noun has a like meaning.

2. Purchase and Sale of Real Property

2.1 Agreement of Purchase and Sale

The Vendor hereby agrees to sell, transfer, assign, set over and convey all of its interest in the Real Property to the Purchaser and the Purchaser hereby agrees to purchase, acquire and assume the Real Property, subject only to Permitted Encumbrances, from the Vendor for the Purchase Price in accordance with the provisions of this Agreement.

2.2 Binding Agreement

Without limiting the rights of the Vendor or the Purchaser to terminate this agreement pursuant to the conditions contained at Sections 5.1 or 6.1, the agreements of the Vendor and the Purchaser set forth in Section 2.1 create and constitute a binding agreement of purchase and sale of the Real Property in accordance with the provisions of this Agreement.

3. Purchase Price

3.1 Purchase Price

The “**Purchase Price**” shall mean Three Million Six Hundred Fifty Thousand Dollars (\$3,650,000.00) for the Real Property, excluding HST, subject to the adjustments as provided in Section 3.3 of this Agreement.

3.2 Deposit

- (a) On or before May 15th, 2023, the Purchaser shall provide a deposit of Two Hundred Thousand Dollars (\$200,000.00) by wire transfer, payable to the Vendor’s Solicitors in trust (the “**Deposit**”), as a deposit to be held by them in trust pending completion or other termination of this Agreement and to be credited on account of the Purchase Price on Closing.
- (b) The Deposit shall be held in trust by the Vendor's Solicitors, in an interest bearing account with any interest accruing thereon for the benefit of the Purchaser. The Deposit and any interest accruing thereon shall be applied towards the Purchase Price on the Closing Date, subject to the provisions of this Agreement.
- (c) The Vendor and the Purchaser hereby direct the Vendor’s Solicitors to deposit the Deposit in an interest bearing account of a Canadian Chartered Bank to be credited to the Purchaser as against the Purchase Price or to be dealt with as otherwise provided.
- (d) In the event the Purchaser’s Conditions contained in section 5.1(a), 5.1(b) and 5.1(c) (the “**Purchaser’s Conditions**”) are waived and thereafter, the Purchaser defaults in the performance of its obligations pursuant to this Agreement and fails to complete the transaction in accordance with the provisions thereof then, absent any default of the Vendor, the Deposit and any accrued interest thereon shall be held in escrow by the Vendor’s Solicitors pending determination of the dispute

between the Parties, and the exercise by the Parties of any and all of their respective rights pursuant to this Agreement, at law or in equity. In the event the transaction contemplated by this Agreement is not completed through no fault of the Purchaser, the Vendor acknowledges and agrees that the Deposit and any accrued interest thereon shall be returned to the Purchaser forthwith, in addition to any and all other rights the Purchaser may have pursuant to this Agreement, at law or in equity.

3.3 Payment of Balance of Purchase Price

On Closing, the balance of the Purchase Price shall be payable in lawful money of Canada, by wire transfer to the Vendor, or as it may direct, subject to adjustments for realty taxes (including local improvements), which shall be apportioned and allowed to the Closing Date (the Closing Date itself to be apportioned to the Purchaser)

3.4 Stakeholder

The parties acknowledge that the Vendor's Solicitors shall be a mere stakeholder of the Deposit as between the parties to this Agreement and, in the event of a dispute between the Vendor and the Purchaser as to entitlement to, or disposition of, the Deposit, the Vendor's Solicitors shall be entitled to pay the Deposit into court and thereafter shall have no further responsibility in regard thereto and the Vendor's Solicitors may act in the interest of the Vendor in the matter of any dispute between the parties.

3.5 Harmonized Sales Tax

- (a) It is understood and agreed that any harmonized sales tax eligible in respect of the transaction contemplated pursuant to this Agreement Tax ("**HST**") shall be the sole responsibility of the Purchaser. In this context:
- (i) the Purchaser shall be registered under subdivision d of Division V of Part IX of the *Excise Tax Act* (Canada) (the "**Act**") for the collection and remittance of HST;
 - (ii) the Purchaser shall be liable, shall self-assess and remit to the appropriate governmental authority all HST which is payable under the Act in connection with the transfer of the Real Property made pursuant to the Agreement, all in accordance with the Act;
 - (iii) the Vendor shall not collect HST on Closing and shall allow the Purchaser to self-assess and remit HST to the Receiver General in accordance with the Act;
 - (iv) the Purchaser shall indemnify and save harmless the Vendor from and against any and all HST, penalties, costs and/or interest which may become payable by or assessed against the Vendor as a result of any inaccuracy, misstatement or misrepresentation made by the Purchaser on the Closing Date in connection with any matter raised in this paragraph or contained in any declaration referred to herein; and

- (v) the Purchaser shall tender on Closing a certificate and indemnity including verification of its registration number issued by Canada Revenue Agency under the Act.

4. Deliveries and Access

4.1 Deliveries by Vendor

- (a) The Vendor covenants to deliver (unless otherwise specified) or make available to the Purchaser, within five (5) Business Days after the date of execution of this Agreement (if not already delivered to the Purchaser or made available to the Purchaser), to the extent that same exist and are in the possession or control of the Vendor, the materials more particularly described in Schedule C annexed hereto (collectively the “**Delivery Materials**”).
- (b) Promptly, after receipt of a request from the Purchaser, the Vendor shall execute and deliver to the Purchaser authorizations permitting Governmental Authorities to release information respecting the Real Property to the Purchaser, provided that any such authorizations shall not authorize or request any inspections of the Real Property.

4.2 Access to the Property

Following the Execution Date to and including the Closing Date, the Vendor shall permit the Purchaser and its employees, agents, representatives, consultants and contractors to have access to the Real Property, from time to time, at the sole expense and risk of the Purchaser, for the purpose of conducting such tests, inspections and investigations as the Purchaser may deem necessary or desirable, including without limitation soil and groundwater tests, environmental audits, inspections and studies. The Vendor acknowledges that the tests and studies may involve the drilling of holes or similar investigations normally conducted as part of a Phase Two Environmental Site Assessment, subject to the provisions of Section 4.3 below.

4.3 Testing

With respect to any invasive or subsurface testing referred to in Section 4.2, the Purchaser shall notify Vendor and provide copies of Purchaser’s proposed work plan at least five (5) Business Days in advance of any proposed soil or groundwater testing or any other invasive sampling, and shall conduct only such testing as may be approved by the Vendor in writing, acting reasonably, and with such conditions as Vendor may require acting reasonably, including, but not limited to, requiring (i) an employee or representative of Vendor be present for such testing and (ii) that Vendor’s representative be permitted to take split or duplicate samples of any samples taken by Purchaser’s representative at the Vendor’s sole cost and risk. Upon completion of tests, studies and entry pursuant to this Section 4, Purchaser shall restore the Real Property to substantially the same condition which existed prior to any such tests, studies or entry. Purchaser shall provide to Vendor a copy of any sampling data and/or test results and environmental site assessments obtained by

Purchaser, promptly after the same is made available to Purchaser. Purchaser shall keep the Real Property free from liens relating to or arising out of any tests, studies or entry by Purchaser or its agents and independent contractors pursuant to this Section 4.

4.4 Notice, Damage and Indemnity.

The Purchaser covenants and agrees to indemnify and save the Vendor harmless from and against all Claims which the Vendor may suffer as a result of the inspections, tests and investigations of the Real Property conducted by the Purchaser or its authorized representatives, as outlined above in this Section 4 or as a result of a breach of this Section 4 by the Purchaser. The Purchaser agrees that the Vendor shall be entitled to deduct from the Deposit the amount of any Claims which the Vendor may suffer as a result of a breach of this Section 4 by the Purchaser.

4.5 Insurance.

The Purchaser shall obtain or cause its consultants to obtain, at its sole cost and expense, and at no cost or expense to the Vendor, at all times until Closing, a commercial liability policy having a combined liability and property damage limit of at least \$3,000,000 with respect to any Claims that may arise in connection with the Purchaser's inspection, tests and investigations of the Real Property under this Section 4. Prior to entering the Property, the Purchaser shall deliver to the Vendor a certificate of insurance confirming the insurance coverage in compliance with the terms of this Section.

4.6 Non Merger

The provisions of this Section 4 shall survive Closing or any other termination of this Agreement, notwithstanding any other provisions hereof.

5. **Purchaser's Conditions Precedent**

5.1 The obligation of the Purchaser to complete this transaction shall be conditional upon each of the following conditions (collectively, the "**Purchaser's Conditions Precedent**") being satisfied and fulfilled on the date noted for satisfaction which conditions have been inserted for the sole benefit of the Purchaser and which Purchaser alone may, in whole or in part, declare satisfied or waived in writing, within the time periods specified below:

- (a) On or before 5:00 p.m. on the Due Diligence Date, the Purchaser being satisfied, in its sole and absolute discretion, that it has arranged such financing as the Purchaser requires to purchase the Real Property on terms and conditions satisfactory to the Purchaser and has satisfied itself, in its sole and absolute discretion with respect to all aspects of the Real Property, including title, Permitted Encumbrances, Leases, Contracts, the physical and environmental condition of the Property, zoning, environmental matters, financial matters and its review of the Vendor's Deliveries. The Purchaser shall be entitled to act in its sole and absolute discretion in deciding whether or not to give notice of satisfaction and shall have no obligation to state or

explain any causes of dissatisfaction in the event it does not give notice of satisfaction;

- (b) all of the covenants and agreements of the Vendor to be performed on or before the Closing Date pursuant to this Agreement having been duly performed in all material respects;
- (c) all of the representations and warranties of the Vendor contained in this Agreement being materially true and correct on Closing; and
- (d) on Closing, the Vendor's title to the Real Property shall be free and clear of all liens, charges, leases, security interests and encumbrances except for the Permitted Encumbrances.

5.2 In the event the Purchaser does not waive all of the Purchaser's Conditions Precedent contained in Section 5.1 above, in writing, prior to the expiration of the applicable time period with respect to each such Condition Precedent, as referred to in each of such subparagraphs of Section 5.1, the Deposit shall be refunded to the Purchaser without penalty together with any accrued interest thereon, and this Agreement shall be terminated and of no further force or effect and neither the Vendor nor the Purchaser shall have any further claims against the other in respect of this Agreement (unless the Agreement is terminated by virtue of the Conditions in Section 5.1(a) or 5.1(b)). The Purchaser agrees and acknowledges that by executing this Agreement, the Purchaser waives the conditions in Section 5.1(a).

6. Vendor's Condition Precedent

6.1 The obligation of the Vendor to complete this transaction shall be conditional upon the following condition (the "Vendor's Condition Precedent") being satisfied and fulfilled on the date noted for satisfaction which condition has been inserted for the sole benefit of the Vendor and which Vendor alone may, in whole or in part, declare satisfied or waived in writing, within the time period specified below:

- (a) all of the covenants and agreements of the Purchaser to be performed on or before the Closing Date pursuant to this Agreement having been duly performed in all material respects.

6.2 In the event the Vendor does not waive the Vendor's Condition Precedent contained in Section 6.1 above, in writing, prior to the expiration of the applicable time period contained in subparagraph 6.1(a) of Section 6.1, the Deposit, if applicable shall be refunded to the Purchaser without penalty together with any accrued interest thereon, and this Agreement shall be considered terminated and of no further force or effect and neither the Vendor nor the Purchaser shall have any further claims against the other in respect of this Agreement, (unless the Agreement is terminated pursuant to subparagraph 6.1(a) of Section 6.1).

7. **Vendor's Covenants**

7.1 The Vendor covenants, represents and warrants to the Purchaser that:

- (a) The Vendor has full power and authority to execute this Agreement and fully perform all of its obligations and covenants herein, including the covenant to convey the Real Property to the Purchaser as required pursuant to this Agreement, all of which have been duly and validly authorized by all necessary corporate proceedings; and
- (b) The Vendor is not now and shall not on the Closing Date, be a non-resident of Canada within the meaning ascribed thereto in the *Income Tax Act* (Canada).

7.2 The Vendor shall convey to the Purchaser, on the Closing Date, registered and beneficial ownership in the Real Property, subject only to the Permitted Encumbrances.

7.3 Vendor's Representations and Warranties

- (a) The Vendor represents and warrants to the Purchaser that:
 - (i) there are no options to purchase, rights of first refusal or other purchase rights with respect to the Real Property or any part thereof that have not expired or been waived;
 - (ii) to the Vendor's knowledge, there are no easements, rights of way, licences or other rights in the nature of easements affecting the Real Property other than those registered against title to the Property (if any);
 - (iii) the Vendor has not received any notice of expropriation of any part of the Real Property and is not aware of any proposed expropriation;
 - (iv) the Vendor has not received notice and is not aware of any pending or threatened litigation or of any other judicial or administrative proceeding affecting the Real Property including, without limitation, in any way relating to the use and occupation of the Real Property;
 - (v) the Vendor is not now and shall not on the Closing Date be a non-resident of Canada within the meaning ascribed thereto in the *Income Tax Act* (Canada); and

- (vi) the Vendor has not, and shall not prior to Closing, have entered into any agreement or committed any act, or permitted any act that may give rise to a lien pursuant to the *Construction Act* (Ontario), other than in the ordinary course of the Vendor's business, and in respect of which all outstanding amounts payable by the Vendor pursuant thereto shall be paid in full on or before Closing;
- (vii) the Vendor has provided copies to the Purchaser of all environmental reports, information and documentation with respect to the Real Property in the Vendor's possession or control;
- (viii) the Vendor has received no notice or Work Orders (as such term is defined in Schedule "C") from any Governmental Authority requesting the Vendor perform any environmental clean-up or remediation of the Real Property; and
- (ix) the Vendor is not aware of any breach of the CPU;
- (x) the Vendor is the legal and beneficial owner of the Real Property.

7.4 Survival

Except as otherwise specifically provided in this Agreement, the representations and warranties in this Agreement shall not merge on Closing but shall continue in full force and effect for the benefit of the party entitled thereto for a period of nine (9) months following the Closing Date.

8. **Closing**

8.1 Closing Date

For purposes of this Agreement, this transaction of purchase and sale shall be completed on the Closing Date.

8.2 Definition of Closing

For the purposes of this Agreement, the expression "**Closing**" shall mean the completion of the transaction contemplated pursuant to this Agreement on the Closing Date.

8.3 Adjustments

On the Closing Date, adjustments shall be made in accordance with Section 3.3 of this Agreement. The provisions in this Agreement relating to adjustments shall not merge but shall survive registration of the transfer of land to the Real Property. If any adjustment cannot be accurately determined at Closing, the parties agree to make further adjustments on a post Closing basis as may be necessary to reflect the provisions hereof, as soon as the amounts in question have been finalised and determined.

8.4 Vacant Possession

On the Closing Date, vacant possession of the Real Property shall be given to the Purchaser, subject to: (i) certain rights that may be reserved to previous owners and others in respect of the Real Property, as more particularly set out in Section 9.1 of this Agreement, and (ii) the Restrictive Covenants (as hereinafter defined).

8.5 Acknowledgment of the Purchaser

The Purchaser acknowledges and agrees that on Closing, title to the Real Property shall be subject to, and only subject to, the Permitted Encumbrances. Except as otherwise provided for in this Agreement or the closing documents, the Vendor shall have no obligations or responsibility to the Purchaser after Closing with respect to any matter relating to the Real Property or the condition thereof, including with respect to Permitted Encumbrances.

9. “As is Where is”

9.1 The Purchaser shall fully examine and inspect the Real Property and become thoroughly familiar with the title, condition, status, and suitability of the Real Property. Each of the Vendor and the Purchaser contemplates that the Purchaser shall fully investigate the Real Property and shall purchase the Real Property based on the Purchaser’s investigations and with full assumption of all risks. The Purchaser confirms and acknowledges that it is purchasing the Real Property and the Vendor is selling the Real Property on an “**as is, where is**” basis at Closing. The term “**as is, where is**” herein means in its condition or state at that date of acceptance of this Agreement and without any agreement, representation, warranty or obligation to inform of any kind, (except as contained herein or as required by law), including, more particularly, as to the suitability of the Real Property for development and the quality of the Real Property, including any environmental condition thereof and subject to all present and future Claims, environmental obligations and investigations in progress or which may in the future arise directly or indirectly with respect to the Real Property or the condition thereof.

9.2 The Purchaser expressly confirms and acknowledges that: (a) the Vendor has not made any representations or warranties whatsoever concerning the Real Property or any matters related to the Real Property; and (b) in entering into this Agreement, the Purchaser is not relying on any representations or warranties from or by any of the Vendor or Vendor Affiliates, other than as expressly provided pursuant to Section 7.3 of this Agreement. Instead, the Purchaser shall conduct such due diligence as it deems necessary to protect its interest in purchasing the Property and in evaluating its liability in doing so. The Purchaser has had the opportunity to examine and inspect the Real Property and become thoroughly familiar with the title, physical and environmental conditions, status and suitability of the Real Property.

9.3 Save and except as set out in Section 7.3 of this Agreement, the Vendor expressly disclaims, negates, has not made, does not make, and has not authorized anyone else to make, any representations or warranties whatsoever, oral or written, express or implied, to Purchaser as to: (a): the condition of the Real Property or any structure or equipment

located upon the Property; (b) the number of acres in the Real Property; (c) the availability of water, sewer, electrical, gas, or other utility services; (d) the location of the Real Property or any portion thereof within any flood plain, flood prone area or water shed; (e) the condition, state of repair or operability of the Real Property (including but not limited to compliance or non-compliance with all applicable laws, including Environmental Laws, land use laws, rules, regulations, orders or requirements, including the presence in, on, at or under the Real Property of any Hazardous Materials, soil or sub-soil conditions, all improvements thereon, and the structural portions thereof); (f) the suitability or fitness for Purchaser's intended use or purpose; (g) the zoning of the Real Property; (h) the environmental condition of the Real Property including, without limitation, the presence of any Hazardous Materials or other waste in, on, at or under the Real Property; (i) the potential for development of the Real Property for any purpose whatsoever, including, without limitation, the availability of any approvals from Governmental Authorities that may be required in respect thereof, or (j) any other matter or thing affecting or relating to the Real Property or this Agreement. The Purchaser expressly confirms and acknowledges that the Purchaser is not relying upon and hereby expressly waives any reliance on any representation or warranty, oral or written, express or implied, of the Vendor.

- 9.4 The Purchaser shall be deemed conclusively to be satisfied with the condition of the Real Property and shall be deemed unequivocally to have accepted the Real Property subject to all Permitted Encumbrances, and shall complete the purchase of the Real Property on an **“as is, where is”** basis. As an inducement to, and as further consideration for, the Vendor agreeing to sell the Real Property to the Purchaser upon the terms and conditions set forth in this Agreement, the Purchaser covenants and agrees that, effective as of the Closing Date, the Purchaser shall forever release and covenant not to sue the Vendor, the Vendor Affiliates and their respective successors and assigns with respect to any matter of any kind arising out of, related to or connected with the Real Property, regardless of whether same is set forth in any documentation, reports or information in the possession or control of the Vendor or provided to or discovered by the Purchaser. The foregoing release and covenant not to sue shall apply to all Claims at law or in equity, including, but not limited to, claims or causes of action for personal injury or death, property damage, claims under Environmental Laws and claims for contribution. It is understood the Purchaser's release of the Vendor under this section shall not apply to matters not disclosed by the Vendor as required under the terms of this Agreement or matters which are in breach of the Vendor's representations and warranties herein.
- 9.5 The Purchaser agrees to execute and deliver at the time of Closing such further agreement whereby the Purchaser shall reaffirm the release and covenant not to sue set forth in Section 9.4 above. Notwithstanding the foregoing, the release and covenant not to sue set forth in Section 9.4 above shall become effective and enforceable automatically upon the registration of the Transfer/Deed of Land in respect of the Real Property in favour of the Purchaser, and the Purchaser shall be bound thereby, in the event that the Vendor waives the obligation of the Purchaser to execute any separate agreement at the time of Closing.
- 9.6 The provisions of this Section 9.6 are intended to be for the benefit of, and shall be enforceable by, the Vendor, each of the Vendor Affiliates and each of their respective successors and assigns, and are in addition to, and not in substitution for, any other rights

that any such person or entity may have by contract or otherwise (if any). The obligations of the Purchaser under this Section 9.6 **Error! Reference source not found.** shall not be terminated or modified in such a manner as to adversely affect the Vendor, any Vendor Affiliate or any of their respective successors and assigns to whom this Section 9 applies, without the consent of such affected party, it being expressly agreed that such affected party shall be third party beneficiaries of this Section 9.6.

- 9.7 In the event that the Purchaser or any of its successors or assigns: consolidate with or merge into any other person or entity and is not the continuing or surviving corporation or entity of such consolidation or merger then the Purchaser shall make proper provision so that such successors and assigns of the Purchaser, and any of their successors or assigns, shall, also assume all of the obligations thereof and abide by the covenants and agreements set forth in this Section 9.7.
- 9.8 The provisions contained in this Section 9 shall expressly survive Closing and the completion of the transactions contemplated pursuant to this Agreement.

10. Title, Transfer and Agreements

- 10.1 The Vendor shall provide the Purchaser with the Transfer/Deed (the “**Transfer**”) on the Closing Date and the Transfer shall be registered thereafter, forthwith at the Purchaser’s expense.
- 10.2 In addition to the document referred to in Section 10.1 above, the Vendor covenants and agrees to deliver to the Purchaser, on the Closing Date:
- (a) A statement of adjustments showing calculation of the adjusted balance of the Purchase Price;
 - (b) Undertaking to Re-Adjust: the Vendor’s undertaking to re-adjust any item on or omitted from the statement of adjustments;
 - (c) Non-Residence Certificate: the Vendor’s certificate setting out that the Vendor is not a “non- resident” of Canada within the meaning and purpose of Section 116 of the Income Tax Act (Canada) and is not receiving the Purchase Price on behalf of a “non-resident” or, in the case of a partnership, is not receiving the Purchase Price on behalf of a partnership that is not a “Canadian partnership” within the meaning and purpose of Section 116 of the Income Tax Act (Canada);
 - (d) Vendor’s Bring-Down Certificate: the Vendor’s certificate setting out that each of the Vendor’s representations and warranties contained in this Agreement are true as at Closing;
 - (e) Assignments: an assignment of the Delivery Materials made available by the Vendor to the Purchaser as contemplated by Section 4.1(a);
 - (f) General Deliveries: such further documentation relating to the completion of the transaction contemplated in this Agreement as shall be otherwise referred to in this

Agreement or requested by the Purchaser, acting reasonably and acceptable to the Vendor.

10.3 The Purchaser covenants and agrees to deliver to the Vendor, on the Closing Date:

- (a) HST Certificate and Indemnity
- (b) Direction re Title;
- (c) Undertaking to Re-Adjust: the Vendor's undertaking to re-adjust any item on or omitted from the statement of adjustments;
- (d) Balance of the Purchase Price; and
- (e) Such other documents, certificates and opinions as are required by the solicitors for the Purchaser, acting reasonably.

11. **Certificate of Property Use**

11.1 Certificate of Property Use

The Purchaser acknowledges that (a) the Real Property is subject to the CPU, a copy of which has been received by the Purchaser, (b) the Real Property and its owner are subject to obligations, limitations, requirements and restrictions under the CPU, and (c) upon Closing the Purchaser shall assume all obligations, limitations, requirements and restrictions under the CPU as the owner of the Property. The Purchaser shall indemnify the Vendor and save the Vendor harmless from any Claims arising from, relating to or connected with the failure of the Purchaser to comply with the obligations, limitations, requirements and restrictions under the CPU.

11.2 Notification of Change of Owner

The Purchaser shall, at its sole cost and expense, immediately notify the Ontario Ministry of Environment, Conservation and Parks upon Closing of the change in ownership of the Real Property and the transfer of obligations under the CPU from the Vendor to the Purchaser and provide any supporting documentation required to effect such notice and transfer and update and/or amend the CPU and/or Certificate of Requirement registered on title to reflect the change in ownership of the Real Property. The Vendor shall use commercially reasonable efforts to cooperate with the Purchaser, at the Purchaser's sole cost and expense, should the Vendor's assistance or approval be required for the Purchaser to comply with its foregoing obligation to complete such notice and transfer.

12. Miscellaneous

12.1 Time of Essence

Time shall be of the essence of this Agreement, but no extension of time for the making of any payment or the doing of any acts hereunder shall be deemed to be a waiver or modification of or affect this provision.

12.2 Notice

(a) Any notice which may be or is required or permitted to be given pursuant to this Agreement shall be in writing, from the party delivering such notice or such party's solicitor, and shall be delivered in person, by facsimile, by electronic copy in a portable document format or such similar format, or sent by registered mail postage prepaid addressed to either: (i) the party receiving such notice, or (ii) such party's solicitor, at the addresses or facsimile numbers set out below. Any such notice shall be deemed to have been given three (3) Business Days after such notice was posted, or, if transmitted by facsimile or by electronic copy, will be for all purposes as effective as if the parties had delivered an original thereof, and shall be deemed to be made when the facsimile or electronic copy is received by the receiving party:

(i) To the Purchaser:

Validus Power Corp.
100 Wellington Street West, Suite 2300
Toronto, Ontario M5J 2R2

Attention: Legal Department
Email: legal@validuspowers.com

(ii) To the Purchaser's Solicitor:

Minden Gross LLP
145 King Street West, Suite 2200
Toronto, Ontario M5H 4G2

Attention: Ryan Gelbart
Email: rgelbart@mindengross.com
Facsimile: 416-864-9223

(iii) To the Vendor:

c/o Georgia-Pacific LLC
133 Peachtree Street NE
Atlanta, GA 30303

Attention: Law Department – Real Estate
Fax: (404) 584-1461

- (iv) To the Vendor's Solicitor:

Bennett Jones LLP
One First Canadian Place
Suite 3400
Toronto, ON M5X 1A4

Attention: J. Scott Martyn
Email: martyns@bennettjones.com
Fax: (416) 863-1716

12.3 Complete Agreement

- (a) This Agreement and the following schedules shall constitute the entire agreement between the Purchaser and the Vendor and there is no representation, warranty, collateral agreement or condition affecting this Agreement or the Real Property or supported hereby other than as expressed in writing:

Schedule "A" – Legal Description
Schedule "B" – Permitted Encumbrances
Schedule "C" – Vendor Deliveries

- (b) This Agreement shall be read with all changes of gender or number required by the context.

12.4 Agents – Real Estate Commissions

- (a) The Vendor: (i) confirms to the Purchaser that it has entered into an agreement with Jones Lang LaSalle Real Estate Services, Inc., as broker, in respect of the sale of the Real Property by the Vendor pursuant to this Agreement, and the Vendor shall be solely responsible for the payment of any commission to Jones Lang LaSalle Real Estate Services, Inc. in respect thereof, and (ii) agrees to indemnify the Purchaser with respect to any Claims arising in respect of paragraph (i) above.
- (b) The Purchaser: (i) confirms to the Vendor that it has entered into an agreement with CBRE Limited, as broker, in respect of the purchase of the Real Property by the Purchaser from the Vendor pursuant to this Agreement, and the Vendor shall be solely responsible for the payment of a commission of 2.5% of the total purchase price plus applicable taxes (as per MLS listing X5292789) to CBRE Limited in respect thereof, and (ii) agrees to indemnify the Purchaser with respect to any Claims arising in respect of paragraph (i) above. The Purchaser represents and warrants that save as provided in this section 12.4(b) it has not entered into any agreements (written or otherwise) or retained any brokers in respect of the purchase of the Real Property by the Purchaser from the Vendor, and (ii) agrees to indemnify the Vendor with respect to any claims arising in respect of a breach of the foregoing representation contained in the preceding paragraph (i), which representation the

Vendor shall be entitled to rely upon for purposes of its indemnity provided pursuant to this Section 12.4(b).

12.5 Assignment

The Purchaser shall not have the right to assign this Agreement, or any interest therein, or direct title to any other party (the “**Assignee**”), without the Vendor’s prior written consent, which consent can be withheld by the Vendor, in its sole and absolute discretion. Notwithstanding the foregoing, the Purchaser may assign this Agreement to an “affiliate” (having the meaning ascribed to it in National Instrument 45-106) without the consent of the Vendor. In the event the of a permitted assignment by the Purchaser, the Purchaser confirms and acknowledges that it shall continue to remain liable to the Vendor, jointly and severally with such Assignee, in respect of the performance of all obligations, covenants and agreements of the Purchaser pursuant to this Agreement (including any such obligations, covenants and agreements of the Purchaser which survive the Closing).

12.6 Tender

Any tender of documents (other than the Transfer/Deed of Land and other documents to be registered electronically (collectively, the “**Electronic Documents**”)) or money hereunder may be made upon the Vendor or the Purchaser, or upon their respective solicitors on the Closing Date.

12.7 Interpretation

This Agreement, when accepted shall constitute a binding contract of purchase and sale and this Agreement constitutes the entire Agreement between the Purchaser and the Vendor and the parties acknowledge that there are no representations, warranties, collateral agreements or conditions affecting the Agreement or the Real Property, other than as expressed herein. The laws of the Province of Ontario shall govern construction of this Agreement and the Agreement shall be read with all changes of gender and number as required by the context and the parties acknowledge that this Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

12.8 Partial Invalidity

If any term, covenant or condition of this agreement or the application thereof to any person or circumstances shall to any extent be invalid or enforceable, the remainder of this Agreement or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each term, covenant or condition of this Agreement shall be valid and enforced to the fullest extent permitted by law.

12.9 Amendments or Waivers

No supplement, modification or waiver of or under this Agreement shall be binding unless executed in writing by the party to be bound thereby and no waiver by a party of any

provision of this Agreement shall be deemed or shall constitute a waiver by such party or any other provision or a continuing waiver unless otherwise expressly provided.

12.10 Confidentiality

The Vendor and the Purchaser agree to take all necessary precautions to maintain the confidentiality of the existence of this Agreement and the terms and conditions contained therein. In that regard neither party may disclose the existence of this agreement and the terms and conditions contained therein to any third party other than their professional advisors and financiers without the concurrence of the other party.

12.11 Subdivision

Provided that this Agreement shall be effective to create an interest in the Real Property only if the provisions of the applicable subdivision legislation of the jurisdiction within which the Real Property is situated are complied with on or before the Closing Date and the Purchaser covenants and agrees to take all necessary steps, on or before Closing, to ensure compliance therewith.

12.12 Adjustment to Conditional Date or Closing Date

Provided that if the Closing Date, or any conditional date falls on day which is not a Business Day, the Closing Date or such conditional date shall be the next Business Day following the day on which the Closing Date of the conditional date would have occurred. For purposes of this Agreement, “**Business Day**” shall mean Monday to Friday, both inclusive, except any such day which is a statutory holiday under the laws of either Canada or the Province of Ontario.

12.13 Solicitors as Agents and Tender

Any notice, approval, waiver, agreement, instrument, document or communication permitted, required or contemplated in this Agreement may be given or delivered and accepted or received by the Purchaser’s Solicitors on behalf of the Purchaser and by the Vendor’s Solicitors on behalf of the Vendor and any tender of Closing Documents and of the balance of the Purchase Price may be made upon the Vendor’s Solicitors and the Purchaser’s Solicitors, as the case may be. The parties agree to complete this transaction using electronic registration, to adopt the LSUC-OBA Document Registration Agreement in use on the Acceptance Date of this Agreement, and to abide by, and instruct their solicitors to abide by, the closing procedures set forth therein for electronic registration.

12.14 Closing Arrangements

- (a) The Transfer shall, save for the Land Transfer Tax Affidavit, be prepared in registrable form at the expense of the Vendor and the Purchaser covenants at its cost to register the Transfer on Closing.
- (b) The Vendor and the Purchaser covenant and agree to cause their respective solicitors to enter into a document registration agreement in the form adopted by

the Joint LSUC-CBAO Committee on Electronic Registration of Title Documents on March 29, 2004, or any successor version thereto (“**DRA**”) to govern the electronic submission of all documents to be registered on the Closing Date in respect of the transaction contemplated by this Agreement to the applicable Land Registry Office. The DRA shall set forth the procedures and timing for completing all registrations electronically and provide for all closing documents and closing funds to be held in escrow pending the submission of documents to be registered in the Land Registry Office and their acceptance by virtue of each registration document being assigned a registration number. The DRA shall also provide that if there is a problem with the TeraView electronic registration system which does not allow the parties to electronically register all registration documents on the Closing Date, the Closing Date shall be deemed to be extended until the next day when the said system is accessible and operating for the applicable Land Registry Office applicable to the Real Property.

- (c) the delivery and exchange of documents, monies, and keys if any, to the Real Property, and the release thereof to the Vendor and the Purchaser, as the case may be, may not occur contemporaneously with the registration of the Electronic Documents, but shall be governed by the DRA, pursuant to which the solicitor receiving any documents, keys and/or certified or wired funds will be required to hold same in escrow, and will not be entitled to release same except in strict accordance with the provisions of the DRA;
- (d) each of the parties hereto agrees that the delivery of any documents not intended for registration on title to the Real Property may be delivered to the other party hereto or its solicitor by e-mail (or by a similar system reproducing the original), provided that all documents so transmitted have been duly and properly executed by the appropriate parties/signatories thereto. The party transmitting any such documents shall also deliver the originals of same to the recipient party or to its solicitor by courier, if same has been so requested by the recipient party or by its solicitor.

12.15 Counterparts

This Agreement, and any amendments thereto, may be executed in any number of counterparts with the same effect as if all parties to this Agreement, or amendment, as the case may be, had signed the same document, and all counterparts will be construed together and constitute one and the same instrument.

12.16 No Registration

The Purchaser agrees and acknowledges that it shall not register notice of this Purchase Agreement on title to the Real Property under any circumstances, and shall indemnify and save the Vendor harmless for any costs or expenses arising from such registration, including without limitation, the obligation to pay land transfer tax which was the subject matter of a deferral of land transfer tax sought and obtained by the Vendor which is

triggered solely as a result of the registration of the Purchase Agreement on title to the Real Property.

12.17 Facsimile, Electronic Transmissions

This Agreement, and any amendments thereto, may be executed by facsimile transmittal facilities, or electronic copy in a portable document format or such similar format and if so executed and transmitted, will be for all purposes as effective as if the parties had delivered an executed original of this Agreement or amendment, as the case may be, and shall be deemed to be made when the receiving party confirms this Agreement or amendment, as the case may be, to the requesting party by facsimile or by electronic copy in a portable document format or such similar format. A party sending a facsimile or electronic copy shall thereafter send or deliver the original document to the receiver of such facsimile or electronic copy.

The remainder of this page is intentionally blank.


Execution Copy

IN WITNESS WHEREOF the Parties hereto have executed this Agreement.

Dated at Toronto, Ontario this 27th day of March, 2023.

2308189 ONTARIO INC.

Per:

DocuSigned by:


Name: Todd Short

Title: President and CEO

I have authority to bind the corporation.

Execution Copy

IN WITNESS WHEREOF the Parties hereto have executed this Agreement.

Dated at Atlanta, Georgia, this 1st day of ~~March~~^{May}, 2023.

INVISTA (CANADA) COMPANY

Per:



Name: Nancy Kowalski

Title: Director

Per:



Name: Kevin Robles

Title: Director

I/We have authority to bind the corporation.

SCHEDULE "A"

LEGAL DESCRIPTION OF REAL PROPERTY

PIN: 45132 0379 (LT)

P PT LT 23, 24 & 25 CON 1, PT LT 23, 24 & 25 CON BROKEN FRONT, PT RDAL BTN CON 1 & CON BROKEN FRONT CLOSED BY LA45719 AS IN LA285539 ERNESTOWN (PARCELS 1,2 & 3); EXCEPT PTS 1 TO 12 29R9843; S/T LA58484, LA184396; T/W LA69824; SUBJECT TO AN EASEMENT OVER PTS 1 - 49 29R9849 IN FAVOUR OF PT 1 29R6737 & PTS 1 - 12 29R9843 UNTIL 2025/12/31 AS IN LX37160; SUBJECT TO AN EASEMENT OVER PTS 1,3,4 29R6966 IN FAVOUR OF PT 1 29R6737 & PTS 1 - 12 29R9843 UNTIL 2025/12/31 AS IN LX37161; SUBJECT TO AN EASEMENT OVER PTS 1 - 50 29R9850 IN FAVOUR OF PT 1 29R6737 & PTS 1 - 12 29R9843 UNTIL 2025/12/31 AS IN LX37162; SUBJECT TO AN EASEMENT OVER PTS 1 - 11 29R9845 IN FAVOUR OF PT 1 29R6737 & PTS 1 - 12 29R9843 UNTIL 2030/12/31 AS IN LX37163; SUBJECT TO AN EASEMENT OVER PTS 1 - 71 29R9851 IN FAVOUR OF PT 1 29R6737 UNTIL 2025/12/31 AS IN LX37164; SUBJECT TO AN EASEMENT OVER PTS 1 - 14 29R9846 IN FAVOUR OF PT 1 29R6737 UNTIL 2025/12/31 AS IN LX37165; SUBJECT TO AN EASEMENT OVER PTS 1 - 16 29R9847 IN FAVOUR OF PT 1 29R6737 AS IN LX37166; SUBJECT TO AN EASEMENT OVER PTS 1 - 7 29R6860, PTS 1 & 2 29R7373, PTS 1 - 13 29R7650 IN FAVOUR OF PT 1 29R6737 AS IN LX37167; SUBJECT TO AN EASEMENT OVER PTS 1 - 4 29R9844 IN FAVOUR OF PTS 1 - 12 29R9843 AS IN LX37168; TOGETHER WITH AN EASEMENT OVER PTS 1 - 12 29R9843 AS IN LX37170; SUBJECT TO AN EASEMENT OVER PARTS 1 TO 15 PLAN 29R10514 IN FAVOUR OF PT LT 35 CON 1 ERNESTOWN AS IN LA44574 AS IN LX80512; SUBJECT TO AN EASEMENT IN GROSS OVER PARTS 15 TO 17 PLAN 29R10514 AS IN LX80513; LOYALIST TOWNSHIP LT 21-24 CON 2 ERNESTOWN PT 1 TO 6 29R7325; S/T LA58484, LA65194, LA69762; LOYALIST; TOGETHER WITH AN EASEMENT AS IN LA223371

PIN: 45132 0378 (LT)

PT LT 24 CON BROKEN FRONT ERNESTOWN, PTS 1 TO 12 29R9843; T/W LA69824; LOYALIST TOWNSHIP

PIN: 45132 0374 (LT)

PT LT 23 CON 1 ERNESTOWN; PT LT 23 CON BROKEN FRONT ERNESTOWN; PT RDAL BTN CON 1 & CON BROKEN FRONT ERNESTOWN CLOSED BY LA45719 AS IN LA285539 (PARCEL 5); LOYALIST TOWNSHIP

PIN: 45132 0373 (LT)

PT LT 23-24 CON BROKEN FRONT ERNESTOWN; AS IN LA285539 (PARCEL 4); TOGETHER WITH AN EASEMENT OVER PTS 1 - 12 29R9843 AS IN LX37170; SUBJECT TO AN EASEMENT OVER PTS 23 & 24 29R6889 IN FAVOUR OF PTS 1 - 12 29R9843 AS IN LX37169; LOYALIST TOWNSHIP

PIN: 45132 0362 (LT)

**LOC. CL14116, BEING PT OF THE BED OF LAKE ONTARIO IN FRONT OF LT 24, BROKEN
FRONT CON. ERNESTOWN, PT 1 29R9227; LOYALIST**

SCHEDULE "B"**PERMITTED ENCUMBRANCES**

The Purchaser accepts title to the Real Property subject to the following encumbrances:

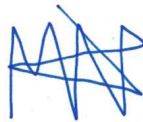
- (a) the reservations, limitations, provisos and conditions expressed in the original grant(s) from the Crown;
- (b) aboriginal or native land claims or rights;
- (c) any registered agreements, restrictions or covenants that are registered on title to the Real Property, including but not limited to the CPU;
- (d) any registered municipal agreements and registered agreements with publicly regulated utilities, provided that they have been complied with;
- (e) any unregistered estate, right, interest or equity to which any persons may be entitled, including without limitation, any rights-of-way pursuant to the provisions of the *Road Access Act*;
- (f) any encroachments and other matters that would be disclosed by up-to-date surveys or a physical examination of the Real Property
- (g) the provisions, restrictions, limitations and qualifications contained in section 44 of the *Land Titles Act* or in Part III of the *Registry Act*, but excluding the provisions dealing with the subdivision control provisions of the *Planning Act*;
- (h) Any security given to a public utility or any municipality or governmental or other public authority when required by the operations of the Real Property in the ordinary course of business, including, without limitation, the right of the municipality to acquire portions of the Real Property for road widening or interchange construction and the right of the municipality to complete improvements, landscaping or remedy deficiencies in any pedestrian walkway;
- (i) Any minor title defects, irregularities, easements, servitudes, encroachments, rights-of- way or other discrepancies in title or possession relating to the Real Property;
- (j) Any rights of expropriation, access or user or any other similar rights conferred or reserved by or in any statutes of Canada or the Province of Ontario;
- (k) Any unregistered interest in the Real Property (including without limitation, leases, claims, agreements of purchase and sale, options and other encumbrances) of which the Purchaser has actual notice; and
- (l) Any unregistered easements or servitudes regarding the provision of utilities to the Real Property of which the Purchaser has actual notice.

SCHEDULE "C"

Delivery Materials

- (a) **Leases:** copies of any existing leases (the "**Leases**");
- (b) **Contracts:** copies of all written service and maintenance contracts relating to the Property which are capable of being assigned and assumed (the "**Contracts**") and all other agreements to which the Property is subject and which are not registered against title to the Lands, provided however the Purchaser shall not be entitled to review the current property management contract or asset management contract;
- (c) **Chattels:** a list of any chattels included in the Real Property;
- (d) **Warranties:** copies of written Warranties relating to the Real Property, if any;
- (e) **Realty Taxes:** copies of assessment and realty tax notices/statements and special assessments with respect to the Real Property for the current calendar year and the immediately preceding two calendar years, and the details of all outstanding realty tax appeals with respect to the Real Property;
- (f) **Reports:** final copies of all third party environmental reports, assessments, risk assessment for the Property in the possession or control of the Vendor, including without limitation all existing soil and groundwater tests, engineering reports, geotechnical reports, construction reports, architects' certificates and reports, surveys, plans, specifications (but excluding appraisals and other indications of value, investment reports and analysis and financial statements prepared for internal use by the Vendor);
- (g) **Litigation:** the details of any actual or threatened litigation (including all environmental claims and any action commenced by a Governmental Authority), in each case affecting any of the Real Property;
- (h) **Certificate of Property Use:** a copy of the CPU;
- (i) **Capital Expenditures:** a list of all capital repairs, replacements and improvements relating to the Real Property, both current and for the past three years, and capital expenditure amortization schedules, if any;
- (j) **Machinery:** a list describing all machinery, equipment and other chattels owned by the Vendor and relating to the Real Property; and
- (k) **Work Orders:** copies of any outstanding work order, deficiency notice, open building permits, letter of non-compliance, order to comply or similar directive issued by any Government Authority with respect to the Real Property ("**Work Order**") of which the Vendor is aware.

THIS IS **EXHIBIT “L”** REFERRED TO IN THE
AFFIDAVIT OF JOSHUA HAMILTON STEVENS,
AFFIRMED REMOTELY BY JOSHUA HAMILTON
STEVENS BEFORE ME *BY VIDEO CONFERENCE*,
THIS 8th DAY OF AUGUST, 2023.



Michael Noel

Commissioner for Taking Affidavits

AMENDMENT OF PURCHASE AND SALE AGREEMENT

THIS AGREEMENT is made this 15th day of June, 2023 (the "**Amending Agreement Date**").

BETWEEN:

INVISTA (CANADA) COMPANY

(the "**Vendor**")

- and -

2308189 ONTARIO INC.

(the "**Purchaser**")

- and -

VALIDUS POWER CORP.

(**"Validus"**)

WHEREAS:

- A. the Vendor and the Purchaser entered into an agreement of purchase and sale dated March 27, 2023 (the "**Purchase Agreement**"), whereby the Vendor agreed to sell and the Purchaser agreed to purchase the lands and premises legally described in PINs 45132-0379 (LT), 45132-0378 (LT), 45132-0374 (LT), 45132-0373 (LT) and 45132-0362 (LT), and municipally known as 5275 and 5330 Bath Road, Loyalist Township, Ontario;
- B. the Purchaser has requested, *inter alia*, that the due date of the Deposit (as hereinafter defined) be extended to June 26, 2023 and that the Closing Date be extended to July 24, 2023; and
- C. further to such request, the Vendor and the Purchaser have agreed to amend the Purchase Agreement on and subject to the terms and conditions contained herein.

NOW THEREFORE, IN CONSIDERATION of the Purchaser increasing the Deposit by an additional amount of One Hundred Thousand (\$100,000) Dollars on the Amending Agreement Date, the mutual covenants and agreements contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby irrevocably acknowledged by the Vendor, the Purchaser and Validus, the parties hereto hereby agree to the following:

1. The recitals contained herein are true in substance and in fact and form an integral part of this Agreement.

2. All capitalized terms, unless otherwise defined herein, shall have the meanings ascribed thereto in the Purchase Agreement.
3. Validus is hereby added as a party to the Purchase Agreement.
4. The definition of "Closing Date" set out in Section 1.1(d) of the Purchase Agreement is hereby deleted in its entirety and replaced with the following:

"(d) **"Closing Date"** means July 24, 2023."

5. Section 3.2(a) of the Purchase Agreement is hereby deleted in its entirety and replaced with the following:

"(a) On or before June 26, 2023, the Purchaser shall provide a non-refundable deposit of Three Hundred Thousand (\$300,000) Dollars by wire transfer, payable to the Vendor's Solicitors in trust (the "**Deposit**"), as a deposit to be held by them in trust pending completion or other termination of this Agreement and to be credited on account of the Purchase Price on Closing."

6. Section 10.3(d) of the Purchase Agreement is hereby amended to delete "and".

7. A new Section 10.3(e) is hereby inserted into the Purchase Agreement as follows:

"(e) Guarantee and indemnity of all obligations under the Purchase Agreement from Validus in favour of the Vendor; and"

8. The former Section 10.3(e) is revised to refer to Section 10.3(f).

9. A new Section 12.2(a)(v) of the Purchase Agreement is hereby inserted as follows:

"(v) To Validus Power Corp.:

100 Wellington Street West, Suite 2300
Toronto, Ontario M5J 2R2

Attention: Ryan Chua
Email: ryan.chua@validuspower.com"

10. A new Section 12.18 is added to the Purchase Agreement as follows:

"12.18 Validus unconditionally and irrevocably, as principal debtor and primary obligor:

(a) guarantees to the Vendor (and its respective successors, transferees and assignees) the due, prompt and complete payment of all amounts payable by the Purchaser pursuant to the Purchase Agreement ("**Guaranteed Obligations**");

(b) undertakes to ensure that the Purchaser will punctually perform when due all of its obligations under or pursuant to the Purchase Agreement;

(c) agrees that if and each time that the Purchaser fails to make any payment when it is due under or pursuant to the Purchase Agreement, Validus must on demand (without requiring the Vendor first to take steps against the Purchaser or any other person) pay that amount to the Vendor as if it were the principal obligor in respect of that amount; and

(d) agrees to indemnify and hold the Vendor harmless, in full and on demand, from and against all and any losses, costs, claims, liabilities, damages, demands, fines and expenses suffered or incurred by the the Vendor arising out of, or in connection with, the Guaranteed Obligations not being recoverable for any reason, or the Purchaser's failure to perform or discharge any of the Guaranteed Obligations by the Purchaser under or pursuant to the Purchase Agreement."

11. Time shall continue to remain of the essence and all other terms and conditions of the Purchase Agreement shall remain the same.
12. The Vendor, the Purchaser and Validus agree that this Agreement is binding upon and shall enure to the benefit of each of the undersigned and their respective successors and permitted assigns.
13. In the event there is a conflict between this Agreement and any other provision of the Purchase Agreement, this Agreement shall prevail.
14. This Agreement may be executed in any number of counterparts and by electronic means (including by way of DocuSign), and may be delivered in any number of counterparts and by facsimile transmission or email PDF form, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one and the same instrument.

[Remainder of the page intentionally left blank]

IN THE WITNESS WHEREOF this Agreement has been duly executed by the parties hereto as of the date first above written.


2308189 ONTARIO INC.

Per: 
53CAA43B9B984BE...
Name: Todd Shortt
Title: President and CEO

Per: _____
Name:
Title:

I/We have authority to bind the corporation.

INVISTA (CANADA) COMPANY

Per: 
98307AEA768F43A...
Name: Nancy Kowalski
Title: Director

Per: _____
Name:
Title:

I/We have authority to bind the corporation.


VALIDUS POWER CORP.

Per: 
53CAA43B9B984BE...
Name: Todd Shortt
Title: President and CEO

Per: _____
Name:
Title:

I/We have authority to bind the corporation.

THIS IS **EXHIBIT “M”** REFERRED TO IN THE
AFFIDAVIT OF JOSHUA HAMILTON STEVENS,
AFFIRMED REMOTELY BY JOSHUA HAMILTON
STEVENS BEFORE ME *BY VIDEO CONFERENCE*,
THIS 8th DAY OF AUGUST, 2023.



Michael Noel

Commissioner for Taking Affidavits

From: Joshua Stevens <Joshua.Stevens@macquarie.com>
Sent: Monday, July 3, 2023 10:31 PM
To: Todd Shortt; Shelley Goertz; Craig Tavares
Cc: Nasr Jeries; Ronnie Alam; James Roberts
Subject: RE: Invista (Canada) Company sale to 2308189 Ontario Inc. of 5275 and 5330 Bath Road, Loyalist Township

Todd, Shelley, Craig,

We acknowledge receipt of a copy of the agreement for the purchase of the Invista land. We note that the execution of the agreement, including the guarantee of the purchaser's obligations by Validus Power Corp, was a default of the lease transaction documents with Macquarie. We also note the land is due to be transferred to a company which is not even a member of the Validus Group.

There is no reason the land should be transferred to a company other than Kingston CoGen LP. Unless the purchase of the land is transferred to Kingston CoGen LP, the transaction will be to the detriment of Kingston CoGen LP, the Validus Group, its shareholders and its creditors. Officers and employees of Validus involved in the transaction are at risk of personal legal liability. We reserve all rights, powers and remedies we have in respect of this matter.

Without limitation of our rights and remedies, we expect you to move this purchase into Kingston CoGen LP by close of business this Friday, July 7, 2023. Transaction documents for this purpose are required to be approved by Macquarie in writing prior to their signing. Please provide proposed transaction documents for this purpose as soon as possible. We also expect you to fully engage on the various information requests we have out to you presently as we continue to expend significant time, cost and resources considering monetization options for Validus assets.

Regards,
Josh

Without prejudice.

From: Craig Tavares <craig.tavares@validuspower.com>
Sent: Wednesday, June 28, 2023 12:10 AM
To: Joshua Stevens <Joshua.Stevens@macquarie.com>; James Roberts <James.Roberts@macquarie.com>
Cc: Todd Shortt <todd.shortt@validuspower.com>; Shelley Goertz <shelley.goertz@validuspower.com>
Subject: Re: Invista (Canada) Company sale to 2308189 Ontario Inc. of 5275 and 5330 Bath Road, Loyalist Township

External Communication

Josh, James,
I spoke to Todd, and he shared with me that due to the critical impact of the Invista land on the valuation and marketability of Kingston, he was able to come up with the funds and pay the deposit which was due as of yesterday. The remaining balance will still need to be solved for. And I understand all paper related to the purchase of the land has been sent to Macquarie.

Thanks

From: Joshua Stevens <Joshua.Stevens@macquarie.com>
Sent: Thursday, June 22, 2023 2:25 PM
To: Craig Tavares <craig.tavares@validuspower.com>; James Roberts <James.Roberts@macquarie.com>
Subject: RE: Invista (Canada) Company sale to 2308189 Ontario Inc. of 5275 and 5330 Bath Road, Loyalist Township

Thank you, Craig.

From: Craig Tavares <craig.tavares@validuspower.com>
Sent: Friday, June 23, 2023 5:51 AM
To: Joshua Stevens <Joshua.Stevens@macquarie.com>; James Roberts <James.Roberts@macquarie.com>
Subject: Fwd: Invista (Canada) Company sale to 2308189 Ontario Inc. of 5275 and 5330 Bath Road, Loyalist Township

External Communication

FYI

Todd sent me the attached amendment and said he'll send the full agreement as well. When I spoke to him, he mentioned he's happy to do whatever is required to help and asked I also extend his thanks to Macquarie for all the help to date.

From: Todd Shortt <todd.shortt@validuspower.com>
Sent: Wednesday, June 21, 2023 2:43 PM
To: Craig Tavares <craig.tavares@validuspower.com>
Subject: Fwd: Invista (Canada) Company sale to 2308189 Ontario Inc. of 5275 and 5330 Bath Road, Loyalist Township

Invista sale amendment

Todd Shortt

President & CEO

Mobile: 705.493.4448

Email: todd.shortt@validuspower.com

From: Dana Talucci <taluccid@bennettjones.com>
Sent: Thursday, June 15, 2023 12:28 PM
To: Scott Martyn <martyns@bennettjones.com>; Todd Shortt <todd.shortt@validuspower.com>; Ryan Chua <ryan.chua@validuspower.com>
Subject: RE: Invista (Canada) Company sale to 2308189 Ontario Inc. of 5275 and 5330 Bath Road, Loyalist Township

You don't often get email from taluccid@bennettjones.com. [Learn why this is important](#)

Please find attached a fully executed copy of the amendment.

Regards,
Dana

Dana Talucci

Associate, Bennett Jones LLP


3400 One First Canadian Place, P.O. Box 130, Toronto, ON, M5X 1A4
T. 416 777 5762 | F. 416 863 1716

BennettJones.com



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THIS IS **EXHIBIT “N”** REFERRED TO IN THE
AFFIDAVIT OF JOSHUA HAMILTON STEVENS,
AFFIRMED REMOTELY BY JOSHUA HAMILTON
STEVENS BEFORE ME *BY VIDEO CONFERENCE*,
THIS 8th DAY OF AUGUST, 2023.



Michael Noel
Commissioner for Taking Affidavits

From: Dana Talucci <taluccid@bennettjones.com>
Sent: Monday, July 24, 2023 6:19 PM
To: Shelley Goertz; Todd Shortt; James Roberts; Joshua Stevens; legal@validuspower.com
Cc: Scott Martyn
Subject: Invista (Canada) Company sale to 2308189 Ontario Inc. of 5275 and 5330 Bath Road, Loyalist Township

External Communication

All,

It is now past 6:00pm EST and we have not received the purchaser's signed documents nor the balance of the purchase price owing. Time remains of the essence. Accordingly, as a result of the purchaser's failure to complete the transaction, the purchaser is in default, the agreement of purchase and sale is now deemed to be terminated and the deposit plus any accrued interest thereon shall be forfeited by the purchaser. Please govern yourself accordingly.

Regards,
Dana

Dana Talucci
Associate, Bennett Jones LLP
3400 One First Canadian Place, P.O. Box 130, Toronto, ON, M5X 1A4
T. 416 777 5762 | F. 416 863 1716

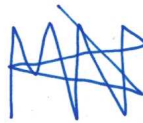
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THIS IS **EXHIBIT “O”** REFERRED TO IN THE
AFFIDAVIT OF JOSHUA HAMILTON STEVENS,
AFFIRMED REMOTELY BY JOSHUA HAMILTON
STEVENS BEFORE ME *BY VIDEO CONFERENCE*,
THIS 8th DAY OF AUGUST, 2023.



Michael Noel
Commissioner for Taking Affidavits

Schedule B

Consent, Authorization and Acknowledgement of Borrowers

TO: Macquarie Equipment Finance Limited (the "Lessor")

AND TO: ERNST & YOUNG LLP and ERNST & YOUNG ORENDA CORPORATE FINANCE INC. (collectively, "EY")

RE: Engagement of EY

Each of the undersigned, Validus Power Corp. and the other signatories hereto (collective, the "Obligors"), consents to the engagement of EY by the Lessor in accordance with the terms set out in the Lessor's letter to EY dated _____, a copy of which it has received, including its attachments (collectively, the "Engagement Letter").

For good and valuable consideration (the receipt of which is acknowledged), the Obligors:

1. irrevocably authorize the Lender to disclose to EY all information and records of every kind and description in the possession of the Lessor concerning the business and affairs of the Obligors;
2. agree to cooperate with EY, agree to promptly provide EY with all information and records of every kind and description which EY may from time to time request (including without limitation all requested business, operating, accounting, legal and other records, documents, information and files) and further agree to promptly meet with EY from time to time in order to provide whatever analysis and explanations EY may reasonably require;
3. authorize EY to conduct the Sale Process (as defined and discussed in detail in the Engagement Letter) on behalf of the Obligors;
4. agree to use reasonable skill, care and attention to ensure that all projections/forecasts provided to EY are based on reasonable, good faith estimates subject to any disclaimer noted thereon;
5. agree to ensure that all information provided to EY is accurate and complete and agree to notify EY if they subsequently learn that any information provided to EY is incorrect or inaccurate or otherwise should not be relied on;
6. agree to provide EY with notice of any event, circumstance, act or omission which in any such case individually or in the aggregate has, or is reasonably likely to have, a material adverse effect on (i) the business, property, condition (financial or otherwise) or prospects of the Obligors, (ii) the ability of the Obligors to perform their financial obligations under their various agreements with the Lessor, or (iii) the rights and benefits available to the Lessor under its various agreements with the Obligors;
7. shall authorize and direct certain mutually designated employees to co-operate fully with EY and to upon request provide EY with all available information, files, documents and records which they may have concerning the Obligors' business and affairs;

8. authorize EY to have access to the Obligors' accounting system, CRA My Business Account, and online banking view access for the purpose of performing the activities described in the Engagement Letter;
9. agree that EY may make copies of, and retain, any documents or records it considers appropriate in order to discharge its mandate to the Lessor;
10. agree that EY will be entitled to communicate freely with the Lender regarding the progress and results of its work;
11. acknowledge that EY will assume no decision-making responsibilities, will have no management capacity, will not offer advice or direction to, or exercise any degree of control over the business and affairs of the Obligors and that EY will not be responsible for any decisions or actions of the Obligors and that its only role will be to conduct itself in accordance with its appointment pursuant to the Engagement Letter and, in particular, that EY will have no fiduciary duties to the Obligors and will not be in conflict in acting for the Lessor and specifically acknowledges that nothing contained herein will constitute an arrangement, agreement or relationship between the Obligors and EY arising from or based, directly or indirectly, upon EY's engagement as contemplated herein;
12. agree that the engagement of EY is not an act of enforcement of any security held by or for the benefit of the Lessor in respect of the liabilities and obligations of the Obligors pursuant to the Participation Agreement or Lease Agreement (each as defined in the Engagement Letter) and, in particular, that EY is not the owner of nor is it in charge, management, custody or control of any real property owned or occupied by the Obligors, of its other property and assets, nor of its business and affairs;
13. acknowledge that, by virtue of the engagement of EY, the Lessor is not waiving any of the rights and remedies available to it under the Participation Agreement or Lease Agreement (each as defined in the Engagement Letter) or under any security held by or for the benefit of the Lessor; and
14. agree that the appointment of EY shall not in any way limit or restrict EY's ability to be engaged, including by the Lessor, in any other capacity with respect to the Obligors.

Limitation of liability

Except to the extent solely and directly caused by EY's fraud or willful misconduct, EY, its personnel, and agents shall have no liability whatsoever to the Obligors or their affiliates related to or arising out of EY's engagement by the Lessor. Neither the Obligors nor any of their affiliates shall bring any claim, proceeding, action, or complaint of any kind against EY, its personnel, or agents.

The Obligors agree that neither they nor any of their affiliates shall bring any claim, proceeding, action, or complaint of any kind against any other member firm of the global Ernst & Young network or any of their respective affiliates, partners, or personnel related to or arising out of EY's engagement by the Lessor in this matter. Other member firms of the global Ernst & Young network and their respective affiliates, partners, and personnel shall have the express benefit of this paragraph and shall have the right to rely on and enforce its terms.

Other matters

The Obligors acknowledge that those clauses above relating to EY's limitation of liability, and indemnity by the Obligors survive any termination of the Engagement Letter.



Yours truly,

Validus Power Corp.
Iroquois Falls Power Corp.
Bay Power Corp.
Kap Power Corp.
Kingston CoGen GP Inc., in its own capacity
and as general partner of **Kingston CoGen**
Limited Partnership
Validus Hosting Inc.

Per: Todd Shortt

Print name: Todd Shortt
Print title: President and CEO

I have the authority to bind the Obligors.

Signature: 
Todd Shortt (Mar 10, 2023 16:16 EST)

Email: todd.shortt@validuspower.com

Borrowers' consent and authorization letter







03.08.2023[28]

Final Audit Report

2023-03-10

| | |
|-----------------|--|
| Created: | 2023-03-10 |
| By: | Craig Tavares (craig.tavares@validuspower.com) |
| Status: | Signed |
| Transaction ID: | CBJCHBCAABAA48Rh8PsGnuz42Ldrl2qTnvphLldBfY9D |

"Borrowers' consent and authorization letter 03.08.2023[28]" History

-  Document created by Craig Tavares (craig.tavares@validuspower.com)
2023-03-10 - 9:12:12 PM GMT
-  Document emailed to todd.shortt@validuspower.com for signature
2023-03-10 - 9:12:59 PM GMT
-  Email viewed by todd.shortt@validuspower.com
2023-03-10 - 9:15:41 PM GMT
-  Signer todd.shortt@validuspower.com entered name at signing as Todd Shortt
2023-03-10 - 9:16:55 PM GMT
-  Document e-signed by Todd Shortt (todd.shortt@validuspower.com)
Signature Date: 2023-03-10 - 9:16:57 PM GMT - Time Source: server
-  Agreement completed.
2023-03-10 - 9:16:57 PM GMT

THIS IS **EXHIBIT “P”** REFERRED TO IN THE
AFFIDAVIT OF JOSHUA HAMILTON STEVENS,
AFFIRMED REMOTELY BY JOSHUA HAMILTON
STEVENS BEFORE ME *BY VIDEO CONFERENCE*,
THIS 8th DAY OF AUGUST, 2023.



Michael Noel
Commissioner for Taking Affidavits

Letter of Representation

April 4, 2023

Ernst & Young Orenda Corporate Finance Inc.

EY Tower
100 Adelaide Street W
Toronto, ON
M5H 0B3

Attention: Jatinder Wadhwa, Senior Vice President

In connection with your role in the preparation of the confidential information memorandum (the "Memorandum") describing Iroquois Falls Power Corp ("IFPC" or "the Company") dated April 2023 certain representations have been made to you.

This letter will confirm that the said representations made to you during the preparation of the aforementioned Memorandum are, to the best of our knowledge, true and correct. More specifically, we represent that:

- a) All historical financial information provided in the Memorandum has been prepared from the financial records of the Company and such information has been prepared in accordance with generally accepted accounting principles applied on a consistent basis;
- b) All information relating to and explanations of the past financial results of the Company have been based upon information believed to be reliable;
- c) We have reviewed the final text of the Memorandum and its appendices and, in doing so, we have ensured to the best of our ability that all financial information is not misleading in any material respect. Further, we concur with the presentation of the non-financial information and represent that it fairly describes the history and background of the business of the Company and the industry in which the Company competes;
- d) We confirm that the references made in the Memorandum to the Company's current and future state, including operating results, capacity, and customer activity for the Company reflects our best judgement regarding the future of the business after taking into account the current state of the Company's business, current industry, and operating conditions. This future state, based on our judgement, represents the most likely set of conditions and the Company's planned course of action;
- e) There are no events or new information regarding the Company which have occurred or become known to us since March 9, 2023, the date of the divestiture engagement letter, that would reasonably necessitate adjustment to, or disclosure in, the Memorandum as drafted up to and including the date of this letter; and,

- f) The Company does not have any material undisclosed liabilities or contingencies or material adverse changes to its business, existing as at March 9, 2023 which have not been disclosed to you.

We understand that you have accepted this engagement to assist in the preparation of the Memorandum as financial consultants or advisors, not as auditors or business valuers, and accordingly, we have not recorded this engagement as an audit or valuation engagement. We also understand that your services will not result in the expression of an opinion on the financial information included in the Memorandum or the fulfilling of any statutory audit requirements.

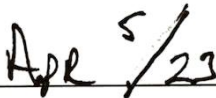
By this letter of representation we confirm that we have no knowledge of any errors or other information that should be disclosed in the Memorandum in order to make it a full and fair initial presentation to potential purchasers.

Very truly yours,

Validus Power Corp



Todd Shortt, President and CEO



Date

THIS IS **EXHIBIT “Q”** REFERRED TO IN THE
AFFIDAVIT OF JOSHUA HAMILTON STEVENS,
AFFIRMED REMOTELY BY JOSHUA HAMILTON
STEVENS BEFORE ME *BY VIDEO CONFERENCE*,
THIS 8th DAY OF AUGUST, 2023.



Michael Noel
Commissioner for Taking Affidavits

From: Todd Shortt <todd.shortt@validuspower.com>
Sent: Tuesday, April 25, 2023 2:33 PM
To: Craig Tavares; James Roberts; Joshua Stevens; Yining Yuan; Tom Wood (CGM); Hugh Anstey; Jatinder Wadhwa
Cc: Ryan Chua
Subject: Re: Jays Game Tomorrow, Wednesday @ 12:30

External Communication

Hello Everyone,

Just to add some more detail, I have a large corporate box. Game time is 1pm. We would meet at Gate 3 at 12:30pm.

Regards

Todd

Todd Shortt

President & CEO

Mobile: 705.493.4448

Email: todd.shortt@validuspower.com

From: Craig Tavares <craig.tavares@validuspower.com>
Sent: Tuesday, April 25, 2023 2:29:07 PM
To: James Roberts <James.Roberts@macquarie.com>; Joshua Stevens <Joshua.Stevens@macquarie.com>; Yining Yuan <Yining.Yuan@macquarie.com>; Tom Wood (CGM) <Thomas.Wood@macquarie.com>; Hugh Anstey <Hugh.Anstey@macquarie.com>; Jatinder Wadhwa <Jatinder.Wadhwa@ca.ey.com>
Cc: Todd Shortt <todd.shortt@validuspower.com>; Ryan Chua <ryan.chua@validuspower.com>
Subject: Jays Game Tomorrow, Wednesday @ 12:30

Hi Folks,

Todd would like to invite you to a Blue Jays game tomorrow at 12:30. Can you please let me know if you are able to make it?

Jatinder, feel free to share this with the rest of the EY team.

Thanks

Craig

THIS IS **EXHIBIT “R”** REFERRED TO IN THE
AFFIDAVIT OF JOSHUA HAMILTON STEVENS,
AFFIRMED REMOTELY BY JOSHUA HAMILTON
STEVENS BEFORE ME *BY VIDEO CONFERENCE*,
THIS 8th DAY OF AUGUST, 2023.



Michael Noel
Commissioner for Taking Affidavits

From: Shelley Goertz <shelley.goertz@validuspower.com>
Sent: Monday, July 31, 2023 6:06 PM
To: Joshua Stevens; James Roberts; Hugh Anstey
Cc: Ronnie Alam
Subject: RE: Phone call
Attachments: IF - canada life balance owing.xlsx

External Communication

Hi Josh

Ok great thanks.

1. \$11,107.70 is for plant management payroll that is paid twice a month
2. \$89,702.80 is for bills paid for Kingston and Iroquois Falls on my credit card (108 receipts that I will have to upload for you)
3. \$42,530.05 is for Canada Life group benefits for Iroquois Falls (summary attached)
4. \$84,232.72 is for Canada Life group RRSP for Iroquois Falls (summary attached)

We did receive notification from the union to pay the outstanding amounts to date.

Please give me a call when you get back in.

Thanks Shelley

Shelley Goertz

Chief Financial Officer

Mobile: 905.906.3258

Email: shelley.goertz@validuspower.com



From: Joshua Stevens <Joshua.Stevens@macquarie.com>

Sent: July 31, 2023 5:53 PM

To: Shelley Goertz <shelley.goertz@validuspower.com>; James Roberts <James.Roberts@macquarie.com>; Hugh Anstey <Hugh.Anstey@macquarie.com>

Cc: Ronnie Alam <Ronnie.Alam@macquarie.com>

Subject: Re: Phone call

Hi Shelley - we are all out of the office for at least the next day apologies. Could you provide some detail on what those payment requests are for so our operations team can review and seek approval internally?

Josh

From: Shelley Goertz <shelley.goertz@validuspower.com>

Sent: Tuesday, August 1, 2023 5:40:44 AM

To: James Roberts <James.Roberts@macquarie.com>; Joshua Stevens <Joshua.Stevens@macquarie.com>; Hugh Anstey <Hugh.Anstey@macquarie.com>

Subject: Phone call

External Communication

Good afternoon guys

Can I get a call back please.

Thanks Shelley

Shelley Goertz

Chief Financial Officer

Mobile: 905.906.3258

Email: shelley.goertz@validuspower.com



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MACQUARIE EQUIPMENT FINANCE LIMITED v VALIDUS POWER CORP. et. al.

Court File No. CV-23-00703754-00CL

IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED; AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, C. C.43, AS AMENDED

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at TORONTO

**SECOND SUPPLEMENTAL AFFIDAVIT OF
JOSHUA HAMILTON STEVENS
(Sworn August 8, 2023)**

Torys LLP

79 Wellington St. W., 30th Floor
Box 270, TD South Tower
Toronto, ON M5K 1N2
Fax: 416.865.7380

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Mike Noel (LSO#: 80130F)
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Alina Butt (LSO#: 84168W)
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Lawyers for Macquarie Equipment Finance Limited,
the Applicant