

DATED: December 1, 1987

BETWEEN:

THE CORPORATION OF THE TOWNSHIP OF BILLINGS

AND:

KAGAMONG POWER INCORPORATED

INDENTURE

MCMMASTER MEIGHEN
Barristers and Solicitors
300-30 Metcalfe Street
Ottawa, Ontario
K1P 5L4

Telephone No. (613) 233-1146
(GORDON B. GREENWOOD)

THIS INDENTURE made the 1st of December,
1987.

IN PURSUANCE OF THE SHORT FORMS OF LEASES ACT,
B E T W E E N:

THE CORPORATION OF THE TOWNSHIP OF
BILLINGS

hereinafter called the "LESSOR".

OF THE FIRST PART

A N D:

KAGAWONG POWER INCORPORATED

hereinafter called the "LESSEE"

OF THE SECOND PART

DEMISED
PREMISES

1. WITNESSETH that in consideration of the rents, covenants and agreements hereinafter reserved and contained on the part of the Lessee, to be paid, observed and performed, the Lessor has demised and leased, and by these presents doth demise and lease unto the Lessee all that messuage or tenement described in the Schedule "A" hereto annexed.

TERM

2.(a) TO HAVE AND TO HOLD the demised premises for and during the term of twenty (20) years, to be computed from a date commencing on the date an agreement is reached between the Lessee and Ontario Hydro, said date to be no later than April 30, 1988 and from thenceforth next ensuing and fully to be completed and ended on a date twenty (20) years thereafter but no later than April 30, 2008.

2.(b) AFTER the aforementioned period, the term of this agreement may be extended for a further term or terms in accordance with subparagraph 5(e) herein.

2.(c) PROVIDED THAT the Lessee may terminate this agreement at any time on six (6) months notice to the Lessor in the event that Ontario Hydro notifies the Lessee that it does not intend to renew its agreement with the Lessee at which time the Lessee will peaceably surrender and yield up to the Lessor the said premises hereby demised, with the appurtenances, together with all the buildings and erections erected or made by the Lessee thereon, in good and substantial repair and condition.

2.(d) PROVIDED FURTHER THAT, should Ontario Hydro terminate its agreement with the Lessee, this agreement may, at the option of the Lessee, be terminated on one (1) month's written notice to the Lessor given within six months after such termination by Ontario Hydro.

RENT

3. YIELDING AND PAYING THEREFOR unto the Lessor during the said term hereby granted, a sum of lawful money of Canada calculated as being fifteen (15%) percent of the gross income of the Lessee actually received, said sums to be payable by consecutive monthly instalments of fifteen (15%) percent of the gross income of the Lessee received in that month. Each instalment shall be paid within two (2) weeks after the end of each month during the said term. All payments to be made hereunder shall be made to the Lessor through Post Office Box 34 in the Village of Kagawong or at such other place as the Lessor may advise the Lessee by notice in writing from time to time. The Lessee shall provide access to the records of the Lessor at such times during the normal business hours of the Lessee as to allow the

Lessee to verify the gross income of the Lessee from time to time. The rent payable hereunder shall be deemed to include all municipal taxes, rates and local improvement charges.

LESSEE'S
COVENANTS

4. THE LESSEE COVENANTS WITH THE LESSOR as follows:

(a) To pay rent.

(b) To construct, (in accordance with architectural drawings mutually agreed upon) maintain and operate a power plant adjacent to the Kagawong River in Lot 28, Concession XV in the Township of Billings.

(c) To construct and permit the Lessor exclusive use of a structure 400 sq. ft. in size for use as a fish hatchery, or such other reasonable use as the parties may agree upon, which structure shall be adjacent to the machine room of the power house.

(d) To maintain the water level of Lake Kagawong within a range of 0.45m. (18 in.) below a datum of 213.11m. (ft.) above mean sea level and to maintain a minimum water flow of 0.4 cubic metres per second at Bridal Veil Falls, whether or not there is a physical breakdown at the power plant. Further, should the water level fall below said range, the Lessor shall stop generating at the power plant and should the water level exceed the maximum range the Lessor shall spill water at such rate as to bring the water level back within the range.

(e) To rebuild or replace the Municipal Water Supply Pipe at or near the concrete culverts under Main Street.

(f) Not to interfere with or obstruct private water line intakes along the Kagawong River or the Canal.

Taxes and
Utilities

(g) The Lessee will in each and every year during the said term pay and discharge, as they become due, all taxes, rates, charges, assessments, license fees, or similar charges as are charged by any Parliamentary, or other body other than the Municipality during the term hereby demised, and all charges for electrical current, gas, water and other rates in connection with any such business or occupancy, and will indemnify and keep indemnified the Lessor from and against payment of all loss, costs, charges and expenses occasioned by, or arising from any and every such tax, rate, charge, assessment and license fee.

Repair, etc.

(h) The Lessee, at its own expense, shall operate, maintain and keep the demised premises and every part thereof in good order and condition (both inside and outside), and promptly make all needed repairs and replacements (structural or otherwise) and without limiting the foregoing the Lessee shall keep the demised premises well painted, clean and in such condition as a careful owner would do, including without limitation, the buildings, structures, driveways, erections, equipment, roofs, foundations and appurtenances, water, sewer and gas connections, wiring, pipes and mains, and all other fixtures, machinery, facilities and equipment belonging to, or connected with the demised premises or any part thereof, or used in their operation. The Lessee shall, at its own expense, promptly comply with the requirements of every applicable statute, law and ordinance, and with every applicable lawful regulation or order, with respect to the condition, equipment, maintenance use or occupation of the demised premises and every part thereof, including the making of any alteration or addition in or to any

structure, upon, connected with or appurtenant to the demised premises or any part thereof, whether or not such alteration be structural or be required on account of any particular use to which the demised premises, or part thereof, may be put, and whether or not such requirement, regulation or order be of a kind now within the contemplation of the parties hereto; and shall comply with any applicable regulation or order of the Canadian Fire Underwriters' Association, or any body having similar functions, or of any Liability or Fire Insurance Company, by which the Lessor, or Lessee, may be insured. The Lessee assumes the sole responsibility for the condition, operation, maintenance and management of the demised premises, and the Lessor shall have no liability for damage to the property of the Lessee or of any sub-lessee, licensee or assignee of the Lessee which is or may at any time be on the demised premises or any account, or for any reason whatsoever.

Definition
of demised
premises

(i) Wherever in this lease the demised premises are referred to they shall be deemed to include any buildings, erections or improvements made in, over or upon the demised premises, including without limiting the foregoing, sewers, water and gas mains, wiring, pipes, paving, driveways, poles and lighting equipment.

View, Repair

(j) It shall be lawful for the Lessor and its agents at all reasonable times during the said term in the presence of a representative of the Lessee to enter the said demised premises to examine the condition thereof; and further that all want of reparation that upon such view shall be found, and for the amendment of which notice in writing shall be left at the premises, the said Lessee will within three (3) calendar months next after such notice well

and sufficiently repair and make good accordingly.

Assigning, etc.

(k) The Lessee shall not during the said term assign, sublet or transfer or procure the said demised premises or any part thereof to be assigned, sublet or transferred to any person or persons whomsoever without the consent in writing of the Lessor, first had and obtained, but such consent shall not be unreasonably withheld.

Leave and Repair

(l) The Lessee, will, at the expiration or sooner determination of the said term, peaceably surrender and yield up to the Lessor the said premises hereby demised, with the appurtenances, together with all the buildings and erections erected or made by the Lessee thereon, in good and substantial repair and condition.

Fixtures, etc.

(m) Provided that the Lessee will surrender and yield up all fixtures, in an "as is" condition at the expiration of the term.

Proviso for Re-Entry

(n) Provided, and it is hereby expressly agreed that if and whenever the rent hereby reserved, or any part thereof, shall be unpaid, or in case of the breach or non-performance of any of the covenants or agreements herein contained on the part of the Lessee, then and in either of such cases the Lessor shall give the Lessee fifteen (15) days' notice specifying the default and the Lessee shall have a further period of fifteen (15) days after the expiry of such period of notice within which to remedy such default and if the Lessee does not remedy such default within the thirty (30) day period it shall be lawful for the Lessor at any time thereafter, into and upon the said demised premises or any part thereof, in the name of the whole to re-enter, and the same to have again, repossess and enjoy, as of the Lessor's former estate; anything herein contained to the contrary notwithstanding.

Insurance and
Damage by
Fire

(o) (i) During the whole of the said term, the Lessee will insure and keep insured the demised premises and every part thereof by insurance in the name of the Lessor, any mortgagee, the Lessee and Ontario Hydro, as their interests may appear to such minimum amounts (not, however, exceeding 100% of the new value, i.e., not taking into consideration any depreciation) and against loss or damage from fire, lightning, explosion, windstorm, hail, riot, sprinkler leakage (if applicable), smoke damage, aeroplane, hurricane and by such other insurable hazards as the Lessor may from time to time reasonably request. The Lessee covenants that nothing will be done or omitted to be done whereby any policy shall be cancelled or the premises rendered uninsurable. Premiums for such insurance shall be paid by the Lessee, and the Insurance policies shall be deposited with the Lessor. In the event that the Lessee shall fail to insure and keep insured, as herein provided, the Lessor shall be free to effect such insurance, and the cost of same shall be added to the rent hereby reserved and the amount thereof shall be payable with the next ensuing monthly instalment of rent. All such insurance shall be carried in a company, or companies, satisfactory to the Lessor.

(ii) In case of damage to, or total or partial destruction of the demised premises or any part thereof by fire, or otherwise, the Lessee shall give the Lessor prompt notice thereof.

(iii) The Lessee further covenants that it will maintain and keep in force during the term of this lease public liability insurance of \$1,000,000.00 in respect of the demised premises and property damage insurance in respect of damage to the property of persons other than the Lessee. Copies of

such policies shall be furnished to the Lessor.

(iv) In the event of partial or total destruction of the demised premises full rent, in accordance with paragraph 3, shall continue without abatement.

Indemnity

(p) The Lessee shall indemnify and save harmless the Lessor from any and all liabilities, damages, costs, claims, suits or actions growing out of

(i) any breach, violation or non-performance of any covenants, condition or agreement in this lease set forth and contained on the part of the Lessee, to be fulfilled, kept, observed and performed;

(ii) any damage to property occasioned by the use and occupation of the demised premises.

(iii) any injury to person or persons, including death resulting at any time therefrom, occurring in, on, or about the demised lands and premises; and

5.

IT IS HEREBY DISTINCTLY UNDERSTOOD AND AGREED BY AND BETWEEN THE LESSOR AND LESSEE that:

Quiet
Enjoyment

(a) The Lessor covenants with the Lessee for quiet enjoyment.

Waiver of
Exemptions

(b) The Lessee further covenants and agrees with the Lessor that notwithstanding the provisions of any Act then in force to the contrary that none of the goods and chattels of the Lessee at any time upon the demised premises shall be exempt from levy by distress for rent in arrears, and the Lessee waives the benefit of all and every exemption that might have accrued to it under the provisions of any Act then in force to that effect, but for the above covenants.

Use

(c) The premises hereby demised shall be

used for the operation of an electrical generator and the sale of electrical power arising therefrom.

Interior Changes and Structural Changes

(d) The Lessee shall have the right to make changes in respect of the interior and structure of the demised premises, provided that the Lessee shall first obtain the prior written consent of the Lessor to any changes (which consent shall not be unreasonably withheld).

Right to Renew

(e) And in consideration of the Lessee entering into this lease the Lessor covenants with the Lessee that if the Lessee duly pays the rent and performs all and every the covenants, provisos and agreements herein contained and on the part of the Lessee to be paid and performed in accordance with the provisions herein contained, the Lessor will, upon the request in writing by the Lessee given at least three (3) months prior to the expiration of the term hereby granted, grant to the Lessee a renewal lease of the said premises for a further term of ten (10) years at the same rent that is set out in this lease. The said renewal lease shall contain the same covenants, provisos and agreements as are contained in this lease except the length of the term and this covenant for renewal. And if such renewal lease shall be granted and if during such renewed term, the Lessee duly pays the rent and performs all and every of the covenants, provisos and agreements herein contained and on the part of the Lessee to be paid and performed in accordance with the provisions herein contained, this lease shall be renewed for a further renewal term of one (1) year and from year to year provided that either party may, with at least one year's written notice to the other, terminate this renewal term and this lease upon the expiration of any renewal term thereafter. The said further renewal lease shall contain the same covenants,

provisos and agreements as are contained in this lease except the length of term.

Heat

(f) The Lessee shall heat all buildings situate upon the demised premises in order that the said buildings shall not be damaged by frost.

Signs

(g) No outside signs shall be placed upon the demised premises other than signs necessary for the public safety and signs giving the name and business of the occupant, provided that no such signs shall be placed upon the demised premises without the prior written consent of the Lessor and provided further that the Lessor shall have the right within three months from the termination of the said term to place upon the demised premises a notice, of reasonable dimensions and reasonably placed so as not to interfere with the business of the Lessee, stating that the demised premises are for sale or to let and further provided that the Lessee will not remove such notice or permit the same to be removed.

Condoning,
Etc.

(h) Any condoning, excusing or overlooking by the Lessor of any default, breach or non-observance by the Lessee at any time or times in respect of any covenant, agreement, proviso or condition herein contained shall not operate as a waiver of the Lessor's rights hereunder in respect of any subsequent default, breach or non-observance nor as to defeat or affect in any way the rights of the Lessor herein in respect of any such subsequent default, breach or non-observance.

Overholding

(i) If at the expiration of this lease the Lessee shall with the consent of the Lessor hold over for any reason, the tenancy of the Lessee thereafter shall be from month to month only, and shall be subject to all terms and conditions of this lease, except as to duration and without any right of renewal, in the absence of written agreement to the

contrary.

Notices, etc.

(j) Any notice to be given pursuant to this lease shall be sufficiently given if served personally, or mailed by prepaid registered mail and in the case of the Lessor addressed to it at Post Office Box 34 in the Village of Kagawong, Ontario and in the case of the Lessee addressed to it at 922 Aylmer Road, Aylmer, Quebec, J9H 5T8. The date of the receipt of any such notice given by mailing as aforesaid shall be deemed conclusively to be the four (4) business days after such mailing. Either party may at any time give notice in writing to the other of any change of address of the party giving such notice and from and after the giving of such notice the address therein specified shall be deemed to be the address of such party for the giving of notices thereafter.

(k) To the best of its ability, the Lessee shall ensure that the building and other improvements to be constructed on the demised premises shall be free of defects of workmanship and materials.

(l) The building to be constructed on the demised premises shall comply with the existing requirements of every applicable statute, law and ordinance, and with every existing applicable lawful regulation or order, with respect to the condition, equipment or maintenance of the demised premises.

(m) The covenant of the Lessee contained in sub-paragraph 4(d) to maintain water levels is not applicable in the event of exceptional weather conditions including, but not restricted to, drought or flood.

(n) The operation of the dam will be in the sole discretion of the Lessee.

(o) The Lessor shall lease the following

equipment to the Lessee at no cost:

(i) One Francis Turbine, manufactured by S. Morgan & Smith, bearing serial number 8188;

(ii) One 0.9m. (3 foot nominal diameter) gate valve; and

(iii) One conical pipe reducer, 1.5m. (5.0ft.) to 0.9m. (3.0 ft.) for connection of penstock to turbine;

said equipment to be relocated to the new power plant at the expense of the Lessee and the Lessee shall repair any damage done to the building from which the equipment is removed.

(p) The Lessor shall grant or consent to such rights, privileges and grants of easement as Ontario Hydro may require from the Lessee.

Addition to Building

6. IF AT ANY TIME during the term of this lease or any renewal thereof the Lessee gives notice in writing to the Lessor that it requires for its own use an addition to be built on to the present building located on the said lands, then, provided such an addition would be permitted under the by-laws of the Corporation of the Township of Billings, the Lessee shall build the said addition to the said building on such terms as the Lessor and the Lessee might agree and any addition so built, shall form part of the said lands and premises and title thereto shall be vested in the Lessor.

Marginal Notes

7. THE LESSOR and Lessee agree that the marginal notes in this lease form no part of this lease and shall be deemed to have been inserted for convenience of reference only.

Definitions

8. UNLESS THE CONTRARY intention appears the words "Lessor" and "Lessee" wherein they appear in

this lease shall mean respectively "Lessor, its successors and/or assigns" and "Lessee, its successors and/or assigns".

IN WITNESS WHEREOF the parties hereto have caused their hands and seals to be affixed hereto.

The Corporation of the
Township of Billings

[Signature]
(Clerk)
Anthea Padee
(Clerk - Treasurer)

Kagawong Power Incorporated

E. M. J.
(SECRETARY - TREASURER)

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SCHEDULE A

(a) The structure and works designated as the "Main Dam" across the Kagawong River and situate in Lot 28, Concession XV of the said Township of Billings where the Kagawong River intersects the Trunk Road leading from Little Current (Highway 540), together with all the appurtenances and fittings thereto such as stoplogs and checks.

(b)(i) a right-of-way for an open cut canal across and through the sixty-six foot (66') Marine Reservation on the north bank of the Kagawong River; and

(ii) a right-of-way fifty feet (50') wide in and through part of said Lot 28, Concession XV of the said Township of Billings on which right-of-way an open cut canal has been cut (being a continuation of the canal referred to in subclause 1.(b)(i) above) the centre line of which right-of-way is as follows:

COMMENCING at the intersection of the centre line of the said right-of-way with the north side of the Kagawong River, the said intersection being fifteen hundred and ninety-six (1596) feet and six (6) inches more or less measured on a course of north twenty-five (25) degrees and twenty-one (21) minutes west from the south east angle of the said lot; THENCE north twelve (12) degrees and forty-seven (47) minutes west along the said centre line four hundred and eighty-five (485) feet and three (3) inches more or less to the south limit of the Trunk Road sixty-six (66) feet wide; THENCE continuing north twelve (12) degrees and forty-seven (47) minutes west on the production of the said centre line, two hundred and seventy-four (274) feet more or less from the north limit of the said Trunk Road to the beginning of a twenty-four (24) degree and twenty-eight (28) minute curve to the right, the radius of which curve is two hundred and thirty-six (236) feet; THENCE along the centre line of the said curve one hundred and seventy-three (173) feet to the end thereof; THENCE north twenty-nine (29) degrees and twenty-two (22) minutes east two hundred and thirty (230) feet more or less to the west limit of the Trunk Road.

The right-of-way described in this subclause 1.(b)(ii) above is the right-of-way "Thirdly" described in a certain Deed of Land from Manitoulin Pulp Company Limited to The Hydro Electric Power Commission of Ontario registered in the Registry Office for the District of Manitoulin on November 5, 1946 in the Book for the Township of Billings as No. 982.

(c) All the easements, rights, powers, privileges and immunities to which the Lessor is now entitled, to convey the waters of Lake Kagawong and the Kagawong River, or a portion thereof, under, across and over those portions of the highways hereunder particularly described.

(i) Across a portion of the Trunk Road leading to Gore Bay (Highway 540) being:

All that portion of the Trunk Road in said Lot Twenty-eight (28) in the Fifteenth Concession of the Township of Billings described as follows: COMMENCING where the centre line of the right-of-way of the channel cut for the Manitoulin Pulp Company across the said Lot Twenty-eight (28) in the Fifteenth Concession intersects the south limit of the said Trunk Road, the said intersection being distant twenty hundred and seventy-two (2072) feet and five (5) inches more or less measured on a course of north twenty-two (22) degrees and twenty-six (26) minutes west from the south east angle of the said lot; THENCE north twelve (12) degrees and forty-seven (47) minutes west along the production of the centre line of said right-of-way sixty-eight (68) feet and eight (8) inches to the north limit of the said Trunk Road and embracing on each side of the said centre line a width of twenty-five (25) feet.

(ii) Across a portion of the Trunk Road leading to the Village of Kagawong being:

All that portion of the Trunk Road leading to the Government Wharf and the Village at the shore of Mudge Bay at Kagawong described as follows: ALL AND SINGULAR that certain portion of the said Trunk Road in Lot Number Twenty-eight (28) in the Fifteenth Concession of the Township of Billings, the said portion being described as follows: COMMENCING where the east end of the centre line of the right-of-way of the channel cut for the Manitoulin Pulp Company across the said Lot Number Twenty-Eight (28) in the Fifteenth Concession intersects the west limit of the Trunk Road, the said intersection being two thousand seven hundred and thirty-one (2731) feet more or less measured on a course of north fifteen (15) degrees and seventeen (17) minutes west from the south east angle of the said Lot Number Twenty-eight (28) in the Fifteenth Concession; THENCE north twenty-nine (29) degrees and twenty-two (22) minutes east, along the production of the said centre line of right-of-way seventy-eight (78) feet and six (6) inches to the east limit of the said Trunk Road.

The above rights and interests intended to be reconveyed in their entirety to the Corporation are those described in its By-Law No. 286 dated September 29, 1925 relating to Manitoulin Pulp Company Limited and being Exhibit "A" to Deposit 23 dated January 5, 1926. The rights and interests above set out are also those "Fourthly" described in the aforesaid Deed of Land registered November 5, 1946 as No. 982.

(d) The control works as they now exist and are situate in said Lot 28, Concession XV of the said Township and located on the south side of the Trunk Road leading to Gore Bay (Highway 540).

(e) The intake works also located in Lot 28, Concession XV of the said Township on the south side of the Trunk Road leading to the Village of Kagawong.

(f) The steel penstock five feet (5') in diameter situate in the aforesaid Lot 28, Concession XV and extending from the concrete culvert described in subclause 1.(c)(ii) and terminating on lands owned by the Lessor in the said lot at the point where the said steel penstock had been connected with a wood stave pipe also having a diameter of five feet (5').

(g) A strip of land one hundred feet (100') in width for a penstock, a powerhouse and all appurtenances necessary for operation of a powerplant is also hereby leased in said lot twenty-eight (28) in the Fifteenth Concession of the Township of Billings.

The said strip of land to commence where the centre line of the penstock described under (in? f) intersects the east limit of the Trunk Road leading to the Village of Kagawong and traverse on an approximate course of north twenty-nine (29) degrees east, across and through to said lot twenty-eight (28) and Kagawong River to a point where the centre line of said strip of land intersects the East limit of Kagawong River.

(h) A right-of-way twenty feet (20') in width, for an overhead powerline, the said right-of-way to commence at the powerhouse to be constructed on land described under (in? g) and traverse north and easterly across and through lot twenty-seven (27) and twenty-eight (28) of the Fifteenth Concession, Township of Billings, to a point where the said powerline shall be connected to Ontario Hydro's powerline.

The location of lands described under (in? g and h) shall be more specifically determined hereafter by the Lessee's engineers.

(i) All the easements, rights, powers, privileges and immunities to which the Lessor is now entitled or may hereafter be entitled in respect of the development of water power on the Kagawong River and Kagawong Lake.

(j) The right at all times hereafter of ingress, egress and regress in, to and over the lands hereby described and any part of lot twenty-seven (27) and twenty-eight (28) in the Fifteenth Concession, Township of Billings now owned by the Lessor, for the Lessee, his heirs, ~~executors~~,

administrators and assigns, his and their employees and workmen with machinery as may be required for the purpose of access to land hereby, described, in constructing, relaying and repairing all works associated with the operation of the powerplant.

