

Court File No.: \_\_\_\_\_

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

BETWEEN:

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985,  
c. C-36, AS AMENDED

AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF **ORIGINAL  
TRADERS ENERGY LTD. and 2496750 ONTARIO INC.**

Applicants

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**APPLICATION RECORD**

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January 27, 2023

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**SERVICE LIST  
(January 27, 2023)**

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Applicants

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# TAB 1

Court File No.

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**NOTICE OF APPLICATION  
(returnable January 30, 2023)**

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION will come on for a hearing (*choose one of the following*)

- In person
- By telephone conference
- By video conference

On January 30, 2023 at 10 AM via videoconference link:

<https://ca01web.zoom.us/j/67587364089?pwd=d00vZDlZQnM5L3kwQ3NEeXJudTF5Zz09>.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: January 27, 2023

Issued by \_\_\_\_\_  
Local registrar

Address of 330 University Avenue  
court office Toronto, ON M5G 1R8

TO: SERVICE LIST

**APPLICATION**

1. Original Traders Energy Ltd. (“**OTE GP**”) and 2496750 Ontario Ltd. (“**249**” and with OTE GP, the “**Applicants**”) make application for an Order substantially in the form attached herein to this Application Record (the “**Initial Order**”) that, *inter alia*:
  - (a) Deems service of the application for the Initial Order to be good and sufficient;
  - (b) Declares each of the Applicants to be a company to which the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) applies;
  - (c) Declares that Original Traders Energy LP (“**OTE LP**”) and OTE Logistics LP (“**OTE Logistics**” with OTE LP, the “**Limited Partnerships**”) (the Applicants and the Limited Partnerships together are referred to as the “**OTE Group**”) shall enjoy the benefits of the protections and authorizations granted by way of the Initial Order;
  - (d) Appoints KPMG Inc. (“**KPMG**” or the “**Proposed Monitor**” and if appointed, the “**Monitor**”) as an officer of the Court to monitor the assets, business and financial affairs of the OTE Group with the rights and duties set out in the CCAA and the Initial Order which contain, *inter alia*, investigative rights regarding the property and business of the OTE Group;
  - (e) Stays for an initial period of not more than ten (10) days all proceedings, rights and remedies taken or that might be taken in respect of the OTE Group, including their respective business and property, their directors and officers and the Monitor, except as otherwise set forth in the Initial Order (the “**Stay**”);
  - (f) Grants the following charges over the OTE Group’s property (collectively, the “**Priority Charges**”), subject and subordinate to the existing charge maintained by the Royal Bank of Canada (“**RBC**”) against certain of the OTE Group through the RBC Forbearance Agreement (term as later defined herein):

- (i) An Administration Charge in favour of counsel to the OTE Group, the Monitor and counsel to the Monitor to secure payment of their professional fees and disbursements to a maximum amount of \$500,000 (the “**Administration Charge**”); and
- (ii) A Directors’ Charge in favour of the directors and officers of the OTE Group to a maximum amount of \$200,000 (the “**D&O Charge**”); and
- (g) Stays and suspends all rights and remedies of any regulators which have authority in respect of regulations pertaining to the fuel and/or gasoline industry (“**Regulators**”) against the OTE Group, or their respective employees and representatives acting in such capacities, or affecting their business or property, except with the written consent of the OTE Group, the Monitor and on notice to the service list, or leave of the Court;
- (h) Authorizes payments to certain critical suppliers for pre-filing expenses up to a maximum aggregate amount of \$6,375,000 (the “**Pre-Filing Critical Supplier Payments**”), any such payment to be made only with the consent of the Monitor and the Applicants and as are necessary to facilitate the Applicants’ ongoing operations and preserve value during the CCAA proceedings;
- (i) Seals the second affidavit of Scott Hill sworn January 27, 2023 (the “**Confidential Affidavit**”), which contains information that has been sealed by court order issued in another jurisdiction; and
- (j) Such further and other relief as this Court may deem just and equitable.

2. The grounds for the application are:

***URGENT NEED FOR RELIEF***

3. The OTE Group is balance sheet insolvent, as the OTE Group is likely unable to fulfil upcoming liabilities anticipated to come due in the first quarter of 2023;

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4. The OTE Group's total assets are estimated by the Proposed Monitor to be \$67,523,927 with total liabilities of \$95,392,669;
  5. It is expected that the OTE Group will have sufficient cash to sustain operations throughout the ongoing CCAA proceeding, but will have insufficient funds to cover all outstanding liabilities;
  6. The liabilities faced by the OTE Group were triggered by alarming executive misconduct which threatens the survival of the OTE Group, arising from the actions of the former president of OTE GP, Glenn Page ("**Page**") among other of his associates and entities;
  7. The OTE Group is missing significant portions of their books and records due to Page's and others' misconduct. Financial information and records of the OTE Group for the entire period from January of 2021 to August of 2022 are unreliable and incomplete;
  8. The Proposed Monitor's role will include recovering and analyzing existing financial records;
  9. Litigation against Page and those working with him has been initiated (the "**Page Claim**") in Ontario and another jurisdiction. The litigation alleges, among other things, that: (a) the defendants used millions of dollars of company funds both directly and indirectly to pay for inappropriate expenses, such as personal luxury travel and property, including a large yacht, and (b) the defendants gave preferred pricing for fuel and gasoline to certain retail gas station businesses located on First Nation reserves in Ontario that they control (collectively, the "**Gen7 Stations**"), at the expense of the OTE Group;
  10. One or more of the OTE Group are named as defendants in various lawsuits, a number of creditors have threatened lawsuits and the OTE Group anticipates further demands for payment;
  11. The OTE Group owes millions of dollars to provincial and federal regulators and taxation authorities, which liabilities threaten the provincial licences it requires to operate its
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business. The revocation of these licenses would render the OTE Group's restructuring impossible;

12. The OTE Group requires the assistance of the Proposed Monitor through these CCAA proceedings to: (a) negotiate pricing changes for OTE GP; (b) review and assess creditors' claims; and (c) consider and advance potential restructuring alternatives for the benefit of all stakeholders;

### ***CCAA APPLIES***

13. The OTE Group is constituted as follows:
  - (a) OTE LP was created under the *Limited Partnership Act* (Ontario) on August 30, 2017 which partnership registration expires on August 28, 2027;
  - (b) OTE GP was initially incorporated under the *Business Corporations Act* (Ontario) on July 5, 2017. It is the general partner of OTE LP;
  - (c) Gen 7 Fuel Management Services LP ("**Gen 7**") was established on April 24, 2018 under the *Limited Partnership Act* (Ontario); the limited partnership is set to expire on April 21, 2033, and as of January 20, 2022, its current name is OTE Logistics; and
  - (d) 249 is an Ontario corporation incorporated under the *Business Corporations Act* (Ontario) on December 17, 2015. It is the general partner of Gen 7;
14. It is necessary and in the best interests of the OTE Group and their stakeholders that the relief sought through these CCAA proceedings be extended to OTE LP and OTE Logistics, as they are highly integrated with the OTE Group and are indispensable to the OTE Group's business and restructuring;

### ***THE BUSINESS OF THE OTE GROUP***

15. The OTE Group functions as a a wholesale fuel supplier which services mainly First Nations' petroleum stations and First Nations' communities across Ontario. The OTE



Group has operated in the First Nations fuel supply industry since 2018 (the “**Fuel Industry**”);

16. The OTE Group services a total of over 30 gas stations throughout Southern Ontario, with a majority of these gas stations situated on 9 different First Nations reserves in Southern Ontario;
17. The OTE Group services these locations by purchasing bulk fuel or blended fuel, and then blending (where required for regular fuel and not for premium/diesel), supplying and distributing gasoline, diesel and fuel products throughout Ontario. If there are supply issues, blending does not always occur through the OTE Group, and sourcing can occur locally;
18. The OTE Group operates out of four Operating Locations (terms as defined below), with a fifth location, the Couchiching Location, being partially constructed:
  - (a) a head office in the Six Nations of the Grand River Territory of Scotland, Ontario (the “**Head Office**”), located at the municipal address of 7273 Indian Line, Scotland, Ontario;
  - (b) a blending center in the Six Nations of the Grand River Territory of Scotland, Ontario (the “**Scotland Blending Location**”), located at the municipal address of 7263 Indian Line, Scotland, Ontario;
  - (c) a blending centre in Tyendinaga Mohawks of Bay of Quinte of Shannonville, Ontario (the “**Shannon Blending Location**”), located at the municipal address of 184 Industrial Park Rd., Shannonville, Ontario;
  - (d) a blending centre in Atikameksheng Anishnawbek Territory of Naughton, Ontario (the “**Atik Blending Location**”, and with (a) to (c) above, the “**Operational Locations**”), located at the municipal address of Lots 13, 14 and 15 of Business Park Road, Chi-Zhiingwaak Business Park in Naughton, Ontario; and

- (e) a blending centre currently under construction in Couchiching First Nation Territory of Fort Frances, Ontario (the “**Couchiching Location**”), located at the municipal address of Frog Creek Road in Fort Frances, Ontario.
19. The Couchiching Location is neither an asset nor a property of the OTE Group, but is effectively a trespass on reserve lands that was constructed to partial completion, and is the further subject of ongoing disputes;
  20. Across all the locations, the OTE Group have 58 employees and 1 part-time employee; 1 employee has been laid off;
  21. OTE LP holds five licenses under the *Fuel Tax Act*, R.S.O. 1990, c. F. 35 and the *Gasoline Tax Act*, R.S.O. 1990, c. G. 5 (collectively, the “**Fuel Licenses**” and the “**Gas Licenses**”), which the OTE Group requires to conduct business in Southern Ontario;

#### ***FINANCIAL SITUATION OF THE OTE GROUP***

22. As of November 1, 2022, OTE LP was in default of its July, August and September 2022 fuel and gas filings and had the following prior amounts outstanding to the MOF as noted below (inclusive of penalty and interest):
  - (a) Gas Licenses: \$27,856,055.71; and
  - (b) Fuel Licenses: \$6,885,045.70.
23. On or about December 6, 2022, the OTE Group received a security cancellation notice from the MOF advising that, on December 2, 2022, the MOF had received a 60 day cancellation notice (the “**Security Cancellation Notice**”) from Zurich Insurance Company Ltd. (“**Zurich**”) in respect of Surety Bond No. 6350832 worth \$2,000,000 (the “**Zurich Bond**”). Zurich had originally issued the Zurich Bond to serve as security for the amounts owing to the MOF in connection with the Gas Licenses and Fuel Licenses. The Security Cancellation Notice stated that replacement security must be put in place by January 30, 2023 (the “**Security Deadline**”);

24. Despite the Security Cancellation Notice, the OTE Group continued to work extensively to ensure that the Zurich Bond would be reinstated. On or about January 24, 2023, Zurich confirmed via email to the OTE Group that a standard reinstatement notice would be provided to the MOF;
25. Despite these meetings, and despite providing the MOF with a copy of the reinstated email confirmation from Zurich, later on the same day of January 24, 2023, the MOF called on and redeemed the Zurich Bond;
26. The OTE Group continued to work extensively with the MOF to extend the Gas Licenses and the Fuel Licenses until March 31, 2023, which was confirmed by the MOF via email to the OTE Group on the evening of January 26, 2023;
27. The MOF has been apprised of these CCAA proceedings;
28. In light of the urgency of requiring the Gas Licenses and the Fuel Licenses, the OTE Group seek certain relief in the Initial Order to stay the revocation of the Gas Licenses and the Fuel Licenses during the pendency of these CCAA proceedings;
29. A revocation of the Gas Licenses and Fuel Licenses after January 31, 2023, during the CCAA proceedings, or any additional punitive action by the MOF would functionally halt the OTE Group's entire business operation, and would pose a significant impediment to its potential restructuring;

#### ***SECURED AND UNSECURED DEBT***

30. The OTE Group's secured debt relates primarily to: (a) liability to the Royal Bank of Canada ("**RBC**"); and (b) liability to secured lessors for various equipment leases (collectively, the "**Equipment Lessors**"). The following parties hold registrations under the *Personal Property Security Act* ("**PPSA**") against the OTE Group, in no particular order:
  - (a) **OTE: RBC;**
  - (b) **OTE LP: RBC;**

- (c) **249:** Transcourt Inc.; Essex Lease Financial Corporation; VFS Canada Inc.; RBC; OTE LP; OTE; and
  - (d) **OTE Logistics:** Essex Lease Financial Corporation; CWB National Leasing Inc.; RBC; OTE LP; and OTE;
31. Transcourt Inc., VFS Canada Inc. and Meridian OneCap Credit Corp. also hold PPSA registrations against the prior name of OTE Logistics;
32. OTE LP and OTE Logistics are parties to certain loan agreements with RBC (the “**RBC Loans**”) which are in default as of January 19, 2023 for a total amount of \$4,558,280.88 in principal and interest (broken down below), exclusive of amounts which are or are to become owing for RBC’s uncanceled fees, costs, professional and legal fees which accrue interest at the rates set out in the RBC Loan Agreements:
- (a) Original Traders Energy LP – Revolving Lease Facility - \$3,453,323.10;
  - (b) Original Traders Energy LP – Visa Facility - \$22,570.68;
  - (c) OTE Logistics LP – Revolving Lease Facility - \$1,046,105.10; and
  - (d) OTE Logistics LP – Visa Facility - \$36,282.00.
33. The RBC Loans are secured pursuant to certain general security agreements, assignments, lease arrangements and guarantees (collectively, the “**RBC Security**”);
34. The RBC Loan is also subject to an account performance security guarantee certificate (the “**EDC Performance Guarantee**”) of cover executed by Export Development Canada (“**EDC**”) to RBC for OTE LP as customer, in association with a letter of credit by RBC to OTE LP under Standby Letter of Credit No. SLC2527026T which secures the purchase of petroleum and to support an LC provided to Marathon Petroleum Company (“**Marathon**”);
35. On or about November 7, 2022, EDC received a claim application from RBC under the EDC Performance Guarantee due to a call on the LC by Marathon;

36. The OTE Group take the position that the LC may have been obtained under false pretences, as detailed further in the Page Claim;
37. Counsel for the OTE Group have been in ongoing communication with counsel for RBC in anticipation of this CCAA proceeding;
38. On or about January 26, 2023, OTE LP and OTE Logistics entered into a forbearance agreement with RBC (the “**RBC Forbearance Agreement**”). Under the RBC Forbearance Agreement, both OTE LP and OTE Logistics have covenanted with RBC that, in exchange for RBC refraining from exercising their rights under the Security during the CCAA proceedings:
  - (a) RBC shall enjoy the benefit of the RBC Security during the relevant borrowers’ anticipated CCAA proceedings such that no charge granted by way of the Initial Order or during the pendency of these CCAA proceedings shall prime the RBC Security, without the written consent of RBC;
  - (b) the Stay contemplated by the Initial Order or during the pendency of the CCAA proceedings shall not apply RBC; and
  - (c) RBC shall be treated as unaffected in any plan of arrangement or compromise filed by the OTE Group under the CCAA;
39. None of the equipment leases relating to the Equipment Lessors are in default, although without the protection of the Initial Order, many may become subject to acceleration and default provisions without the benefit of the Stay, which would hinder the OTE Group’s restructuring prospects;

***OTHER LIABILITIES AND/OR ASSETS***

40. Due to the missing and/or unavailable state of the OTE Group’s books and financial records as a result of alleged misconduct of past executives and others, the Proposed Monitor continues to review and work with the OTE Group to determine and calculate all other outstanding liabilities and assets, which may include certain notes receivables,

notes payables, net tax refunds from US taxing authorities, and liabilities to the Canada Revenue Agency (the “CRA”), among others;

41. As discussed above, the OTE Group is also both subject to and has initiated actions against past executives and their associates due to, *inter alia*, the alleged misconduct, in both Canada and external jurisdictions, and anticipates additional litigation surrounding employee claims and suppliers, among other matters;

### ***STRATEGIC INITIATIVES***

42. The OTE Group have pursued a number of strategic initiatives in advance of this CCAA filing with the assistance of KPMG, which was retained by the OTE Group prior to this Application, including:
- (a) Stabilizing the financial function at the OTE Group (i.e., financial reporting, forecasting, liquidity management);
  - (b) Getting access to and updating the accounting records and related systems (i.e., human resources);
  - (c) Working to ensure appropriate controls and processing are in place for more accurate and timely reporting;
  - (d) Correcting invoicing processes that have, in the past, incorrectly allowed for the invoicing of lower than prescribed tax rates related to fuel sales;
  - (e) Reviewing and assessing product costing; and
  - (f) Revising operational structure and related costs.

### ***OBJECTIVE OF THE CCAA PROCESS***

43. The OTE Group’s business has significant value and plays an important role among the First Nation communities of Southern Ontario. The best method of realization for creditors is through a CCAA process, so that the OTE Group can explore potential restructuring options;

44. In consultation with their advisors, including the Proposed Monitor, the OTE Group have determined that the CCAA process provides the most potential benefit to all stakeholders of the OTE Group;
45. Unless these CCAA proceedings are implemented, the OTE Group will not be able to continue operating;
46. An order under the CCAA is required to preserve the value of the OTE Group's business for the benefit of their stakeholders;
47. The Proposed Monitor has consented to acting as Monitor in these proceedings;

### ***PRIORITY CHARGES***

48. The OTE Group are seeking the Priority Charges, subordinate to the RBC Security, as part of the relief granted by the Initial Order in the following priority and amounts:
  - (a) Administration Charge of \$500,000; and
  - (b) D&O Charge of \$250,000.
49. The relief sought in the Initial Order in respect of Priority Charges is limited to the amount reasonably necessary for the OTE Group to continue operations in the ordinary course of business during the initial 10-day Stay;

### ***SEALING ORDER***

50. The OTE Group seek an order sealing the Confidential Affidavit. The sealing order is being sought to honour an existing sealing order made by a court in another jurisdiction;

### ***STATUTORY REGIME***

51. The provisions of the CCAA and the statutory, inherent and equitable jurisdiction of this Court;
52. Rules 1.04, 2.03, 3.02, 14.05(2) and 16 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended, along with any other relevant provisions therein;

53. Section 106 of the *Courts of Justice Act*, R.S.O. 1990, c. C. 43, as amended, along with any other relevant provisions therein; and
54. Such further and other grounds as counsel may advise;
55. **THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:
  - (a) the Affidavit of Scott Hill sworn January 27, 2022 and the exhibits attached thereto;
  - (b) the Confidential Affidavit, and the exhibits attached thereto;
  - (c) the pre-filing report of the Monitor, including, without limitation, the exhibits appended thereto; and
  - (d) such further and other material as counsel may submit and this Court may permit.

Date: January 27, 2023

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*Lawyers for the OTE Group*



**TO: SERVICE LIST**

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, C. C-36, AS AMENDED  
AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF ORIGINAL TRADERS ENERGY LTD. AND 2496750  
ONTARIO INC.**

Court File No:

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

**Proceedings commenced at Toronto**

**NOTICE OF APPLICATION**  
**(returnable Jan. 30, 2023)**

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# TAB 2

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

THE HONOURABLE ) MONDAY, THE 30TH  
JUSTICE OSBORNE ) DAY OF JANUARY, 2023

IN THE MATTER OF THE *COMPANIES' CREDITORS*  
*ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF **ORIGINAL TRADERS ENERGY LTD.**  
**AND 2496750 ONTARIO INC.** (each, an "Applicant" and  
collectively, the "**Applicants**")

**INITIAL ORDER**

THIS APPLICATION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day by judicial videoconference via Zoom in Toronto, Ontario.

ON READING the affidavit of Scott Hill sworn January 27, 2023 and the Exhibits thereto (the "**Hill Affidavit**"), the second affidavit of Scott Hill sworn January 27, 2023 and the Exhibits thereto (the "**Second Hill Affidavit**"), the pre-filing report of the proposed monitor, KPMG Inc. ("**KPMG**") dated January 27, 2023 (the "**Pre-Filing Report**"), and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Applicants, OTE Logistics LP and Original Traders Energy LP (with OTE Logistics LP, the "**Partnerships**" and collectively with the Applicants, the "**OTE Group**"), counsel for Royal Bank of Canada ("**RBC**") and such other counsel who were present, and on reading the consent of KPMG to act as the monitor (the "**Monitor**"),

## **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 Application is properly returnable today and hereby dispenses with further service thereof.

## **DEFINED TERMS**

2. THIS COURT ORDERS that capitalized terms used within this Order shall have the meanings ascribed to them in the Hill Affidavit or the Pre-Filing Report, as applicable, if they are not otherwise defined herein.

## **APPLICATION**

3. THIS COURT ORDERS AND DECLARES that the Applicants are companies to which the CCAA applies. Although not Applicants, the Partnerships shall enjoy the benefits of the protections and authorizations provided by this Order.

## **PLAN OF ARRANGEMENT**

4. THIS COURT ORDERS that the Applicants shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**") between, *inter alia*, one or more of the OTE Group.

## **POSSESSION OF PROPERTY AND OPERATIONS**

5. THIS COURT ORDERS that the OTE Group shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the OTE Group shall continue to carry on business in a manner consistent with the preservation of their business (the "**Business**") and Property. The OTE Group are authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

6. THIS COURT ORDERS that the OTE Group shall be entitled to continue to utilize the central cash management system currently in place as described in the Hill Affidavit or replace it with another substantially similar central cash management system (the "**Cash Management System**") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the OTE Group of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the OTE Group, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under any future Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

7. THIS COURT ORDERS that the OTE Group shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;
- (b) the fees and disbursements of any Assistants retained or employed by the OTE Group in respect of these proceedings, at their standard rates and charges;
- (c) with the consent of the Monitor and the OTE Group, amounts owing for goods or services actually supplied to any of the OTE Group prior to the date of this Order by third party suppliers, up to a maximum aggregate amount of \$6,375,000, if such third party is critical to the Business and ongoing operations of the OTE Group; and
- (d) amounts owing to the Ministry of Finance relating to an agreement reached with the Ministry of Finance on January 26, 2023 regarding the extension of certain fuel and gas tax licenses.

8. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, the OTE Group shall be entitled but not required to pay all reasonable expenses incurred by the OTE Group in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services;
- (b) any payments required by RBC under the existing credit facilities extended by RBC to certain of the OTE Group; and
- (c) payment for goods or services actually supplied to the OTE Group following the date of this Order.

9. THIS COURT ORDERS that the OTE Group shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the OTE Group in connection with the sale of goods and services by the OTE Group, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any

nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the OTE Group.

10. THIS COURT ORDERS that until a real property lease is disclaimed in accordance with the CCAA, the OTE Group shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the OTE Group and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

11. THIS COURT ORDERS that, except as specifically permitted herein, the OTE Group are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the OTE Group to any of its creditors as of this date, save and except for RBC; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

### **CARVE-OUT**

12. THIS COURT ORDERS that RBC shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicants under the CCAA.

### **RESTRUCTURING**

13. THIS COURT ORDERS that the OTE Group shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as hereinafter defined), have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of its business or operations;



- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate; and
- (c) pursue all avenues of refinancing of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

all of the foregoing to permit the OTE Group to proceed with an orderly restructuring of the Business (the "**Restructuring**").

14. THIS COURT ORDERS that the OTE Group shall provide each of the relevant landlords with notice of the OTE Group's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the OTE Group's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the OTE Group, or by further Order of this Court upon application by the OTE Group on at least two (2) days notice to such landlord and any such secured creditors. If the OTE Group disclaims the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the OTE Group's claim to the fixtures in dispute.

15. THIS COURT ORDERS that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the OTE Group and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the OTE Group in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

## **NO PROCEEDINGS AGAINST THE OTE GROUP OR THE PROPERTY**

16. THIS COURT ORDERS that until and including February 9, 2023, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court, tribunal, agency or other legal or, subject to paragraph 19, regulatory body (each, a "**Proceeding**") shall be commenced or continued against or in respect of the OTE Group or the Monitor or their respective employees and representatives acting in such capacities, or affecting the Business or the Property, except with the prior written consent of the OTE Group and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the OTE Group or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

17. THIS COURT ORDERS that the Stay Period does not apply to the rights and remedies of RBC as it pertains to security provided by the OTE Group in favour of RBC.

## **NO EXERCISE OF RIGHTS OR REMEDIES**

18. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, regulatory body or agency, or any other entities (all of the foregoing, collectively being "Persons" and each being a "Person"), other than RBC, against or in respect of the OTE Group or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the OTE Group and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the OTE Group to carry on any business which the OTE Group is not lawfully entitled to carry on, (ii) subject to paragraph 19, affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

19. THIS COURT ORDERS that notwithstanding Section 11.1 of the CCAA, all rights and remedies of provincial and federal regulators and/or border authorities that have authority with respect to the importation and exportation of fuel, petroleum, diesel and/or gasoline against or in respect of the OTE Group or their respective employees and representatives acting in such capacities, or affecting the Business or the Property, are hereby stayed and suspended during the

Stay Period except with the written consent of the OTE Group and the Monitor, or leave of this Court on notice to the Service List, such that no licenses held by any of the OTE Group may be revoked or expire during the Stay Period and same are further extended during the course of these CCAA proceedings.

### **NO INTERFERENCE WITH RIGHTS**

20. THIS COURT ORDERS that during the Stay Period, 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 OTE Group, except with the written consent of the OTE Group and the Monitor, or leave of this Court.

### **CONTINUATION OF SERVICES**

21. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the OTE Group or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the OTE Group, 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 OTE Group, and that the OTE Group shall be entitled to the continued use of its current premises, 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 OTE Group in accordance with normal payment practices of the OTE Group or such other practices as may be agreed upon by the supplier or service provider and each of the OTE Group and the Monitor, or as may be ordered by this Court.

### **NON-DEROGATION OF RIGHTS**

22. THIS COURT ORDERS that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-

advance any monies or otherwise extend any credit to the OTE Group. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

### **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

23. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the OTE Group with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the OTE Group whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the OTE Group, if one is filed, is sanctioned by this Court or is refused by the creditors of the OTE Group or this Court.

### **DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE**

24. THIS COURT ORDERS that the OTE Group shall jointly and severally indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the OTE Group after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

25. THIS COURT ORDERS that the directors and officers of the OTE Group shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of **\$250,000**, as security for the indemnity provided in paragraph 24 of this Order. The Directors' Charge shall have the priority set out in paragraphs 36 and 38 herein.

26. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the OTE Group's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 24 of this Order.

## APPOINTMENT OF MONITOR

27. THIS COURT ORDERS that KPMG is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the OTE Group with the powers and obligations set out in the CCAA or set forth herein and that the OTE Group and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the OTE Group pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

28. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the OTE Group's receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) advise the OTE Group in its development of the Plan and any amendments to the Plan;
- (d) assist the OTE Group, to the extent required by the OTE Group, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (e) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the OTE Group, to the extent that is necessary to adequately assess the OTE Group's business and financial affairs or to perform its duties arising under this Order;
- (f) compel the production, from time to time, from any Person having possession, custody or control of any books, records, accountings, documents, correspondences or papers, electronically stored or otherwise, relating to the OTE Group (the "**Requested Information**");

- (g) require any Requested Information to be delivered within thirty (30) days of the Monitor's request or such a longer time period as the Monitor may agree to in its discretion;
- (h) conduct investigations from time to time, including examinations under oath of any Person reasonably thought to have knowledge relating to the Requested Information;
- (i) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (j) perform such other duties as are required by this Order or by this Court from time to time.

29. THIS COURT ORDERS that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

30. THIS COURT ORDERS that nothing herein contained shall require the Monitor 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 Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor'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.

31. THIS COURT ORDERS that the Monitor shall provide any creditor of the OTE Group with information provided by the OTE Group in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the OTE Group is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the OTE Group may agree.

32. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

33. THIS COURT ORDERS that the Monitor, counsel to the Monitor and counsel to the OTE Group shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the OTE Group as part of the costs of these proceedings, whether incurred prior to, on, or subsequent to the date of this Order, by the OTE Group as part of the costs of these proceedings. The OTE Group is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the OTE Group on a weekly basis and, in addition, the Applicant is hereby authorized to pay to the Monitor, counsel to the Monitor and counsel to the Applicant, retainers in the approximate amount of **\$950,000** to be held by them as security for payment of their respective fees and disbursements outstanding for certain pre- and post-filing costs.

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

#### **ADMINISTRATION CHARGE**

35. THIS COURT ORDERS that the Monitor, counsel to the Monitor, and the OTE Group's counsel shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of **\$500,000**, as

security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 36 and 38 hereof.

#### **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

36. THIS COURT ORDERS that the priorities of the existing security held by RBC (the “**RBC Security**”), the Directors’ Charge and the Administration Charge, as among them, shall be as follows:

First – RBC Security;

Second – Administration Charge; and

Third – Directors’ Charge.

37. THIS COURT ORDERS that the filing, registration or perfection of the Directors’ Charge, the Administration Charge or the RBC Security (collectively, the “**Charges**”) shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

38. THIS COURT ORDERS that each of the Directors’ Charge, the Administration Charge and the RBC Security (all as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, “**Encumbrances**”) in favour of any Person.

39. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the OTE Group shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Directors’ Charge, the Administration Charge or the RBC Security, unless the OTE Group also obtains the prior written



consent of the Monitor and the beneficiaries of the Directors' Charge, the RBC Security and the Administration Charge, or further Order of this Court.

40. THIS COURT ORDERS that the Directors' Charge, the Administration Charge and the RBC Security shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the OTE Group, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Charges shall not create or be deemed to constitute a breach by the OTE Group of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the OTE Group entering into the creation of the Charges; and
- (c) the payments made by the OTE Group pursuant to this Order and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

41. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the OTE Group's interest in such real property leases.

## SERVICE AND NOTICE

42. THIS COURT ORDERS that the Monitor shall (i) without delay, publish in the Globe and Mail (National Edition) a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the OTE Group of more than \$1000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

43. THIS COURT ORDERS that the Monitor shall create, maintain and update as necessary a list of all Persons appearing in person or by counsel in this proceeding (the “**Service List**”). The Monitor shall post the Service List, as may be updated from time to time, on the Monitor’s website as part of the public materials to be recorded thereon in relation to this proceeding. Notwithstanding the foregoing, the Monitor shall have no liability in respect of the accuracy of or the timeliness of making any changes to the Service List.

44. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (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 <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) 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://home.kpmg/ca/en/home/services/advisory/deal-advisory/creditorlinks/original-traders-energy-group.html>>’.

45. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the OTE Group and the Monitor are 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 the OTE Group's creditors or other interested parties at their respective addresses as last shown on the records of the OTE Group 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.

## **GENERAL**

46. THIS COURT ORDERS that the OTE Group or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

47. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the OTE Group, the Business or the Property.

48. 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 OTE Group, the Monitor and their respective 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 OTE Group and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the OTE Group and the Monitor and their respective agents in carrying out the terms of this Order.

49. THIS COURT ORDERS that each of the OTE Group and the Monitor 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 Monitor 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.

50. THIS COURT ORDERS that any interested party (including the OTE Group and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days

notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

51. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

52. THIS COURT ORDERS that this Order is effective from today's date and is enforceable without the need for entry or filing.

**SEALING RELIEF**

53. THIS COURT ORDERS that the Second Hill Affidavit shall and is hereby sealed, kept confidential, and shall not form part of the public record pending further Order of this Court.

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IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, C. C-36, AS AMENDED  
AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF ORIGINAL TRADERS ENERGY LTD. AND 2496750 ONTARIO  
INC.

Court File No.

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

**Proceedings commenced at Toronto**

**INITIAL ORDER**

**AIRD & BERLIS LLP**

Barristers and Solicitors

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*Lawyers for the OTE Group*

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51764734.8

# TAB 3

Court File No. \_\_\_\_\_

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

THE HONOURABLE \_\_\_\_\_ ) ~~WEEKDAY~~ MONDAY, THE #30TH  
JUSTICE OSBORNE ) DAY OF ~~MONTH~~ JANUARY, ~~20YR~~ 2023

IN THE MATTER OF THE *COMPANIES' CREDITORS*  
*ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF ~~{APPLICANT'S NAME}~~ (the  
"ORIGINAL TRADERS ENERGY LTD. AND 2496750  
ONTARIO INC. (each, an "Applicant" and collectively, the  
"Applicants"))

**INITIAL ORDER**

THIS APPLICATION, made by the ~~Applicant~~ Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day ~~at 330 University Avenue,~~ by judicial videoconference via Zoom in Toronto, Ontario.

ON READING the affidavit of ~~{NAME}~~ Scott Hill sworn ~~{DATE}~~ January 27, 2023 and the Exhibits thereto (the "Hill Affidavit"), the second affidavit of Scott Hill sworn January 27, 2023 and the Exhibits thereto (the "Second Hill Affidavit"), the pre-filing report of the proposed monitor, KPMG Inc. ("KPMG") dated January 27, 2023 (the "Pre-Filing Report"), and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for ~~{NAMES}, no one appearing for~~

~~[NAME]<sup>1</sup> although duly served as appears from the affidavit of service of [NAME] sworn [DATE] the Applicants, OTE Logistics LP and Original Traders Energy LP (with OTE Logistics LP, the “Partnerships” and collectively with the Applicants, the “OTE Group”), counsel for Royal Bank of Canada (“RBC”) and such other counsel who were present, and on reading the consent of [MONITOR’S NAME] KPMG to act as the monitor (the “Monitor”),~~

## SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged and validated<sup>2</sup> so that this Application is properly returnable today and hereby dispenses with further service thereof.

## DEFINED TERMS

2. THIS COURT ORDERS that capitalized terms used within this Order shall have the meanings ascribed to them in the Hill Affidavit or the Pre-Filing Report, as applicable, if they are not otherwise defined herein.

## APPLICATION

3. ~~2.~~ THIS COURT ORDERS AND DECLARES that the ~~Applicant is a company~~ Applicants are companies to which the CCAA applies. Although not Applicants, the Partnerships shall enjoy the benefits of the protections and authorizations provided by this Order.

## PLAN OF ARRANGEMENT

4. ~~3.~~ THIS COURT ORDERS that the ~~Applicant~~ Applicants shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or

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<sup>1</sup>~~Include names of secured creditors or other persons who must be served before certain relief in this model Order may be granted. See, for example, CCAA Sections 11.2(1), 11.3(1), 11.4(1), 11.51(1), 11.52(1), 32(1), 32(3), 33(2) and 36(2).~~

<sup>2</sup>~~If service is effected in a manner other than as authorized by the Ontario Rules of Civil Procedure, an order validating irregular service is required pursuant to Rule 16.08 of the Rules of Civil Procedure and may be granted in appropriate circumstances.~~



arrangement (hereinafter referred to as the "**Plan**") between, *inter alia*, one or more of the OTE Group.

## **POSSESSION OF PROPERTY AND OPERATIONS**

5. ~~4.~~ THIS COURT ORDERS that the ~~Applicant~~OTE Group shall remain in possession and control of ~~its~~their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the ~~Applicant~~OTE Group shall continue to carry on business in a manner consistent with the preservation of ~~its~~their business (the "**Business**") and Property. The ~~Applicant is~~OTE Group are authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

6. ~~5.~~ THIS COURT ORDERS that the ~~Applicant~~OTE Group shall be entitled to continue to utilize the central cash management system<sup>3</sup> currently in place as described in the Hill Affidavit ~~of~~ ~~[NAME]~~ ~~sworn~~ ~~[DATE]~~ or replace it with another substantially similar central cash management system (the "**Cash Management System**") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the ~~Applicant~~OTE Group of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the ~~Applicant~~OTE Group, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under ~~the~~any future Plan with

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<sup>3</sup> ~~This provision should only be utilized where necessary, in view of the fact that central cash management systems often operate in a manner that consolidates the cash of applicant companies. Specific attention should be paid to cross border and inter company transfers of cash.~~

regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.†

7. ~~6.~~ THIS COURT ORDERS that the ~~Applicant~~OTE Group shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; ~~and~~
- (b) the fees and disbursements of any Assistants retained or employed by the ~~Applicant~~OTE Group in respect of these proceedings, at their standard rates and charges;
- (c) with the consent of the Monitor and the OTE Group, amounts owing for goods or services actually supplied to any of the OTE Group prior to the date of this Order by third party suppliers, up to a maximum aggregate amount of \$6,375,000, if such third party is critical to the Business and ongoing operations of the OTE Group; and
- (d) amounts owing to the Ministry of Finance relating to an agreement reached with the Ministry of Finance on January 26, 2023 regarding the extension of certain fuel and gas tax licenses.

8. ~~7.~~ THIS COURT ORDERS that, except as otherwise provided to the contrary herein, the ~~Applicant~~OTE Group shall be entitled but not required to pay all reasonable expenses incurred by the ~~Applicant~~OTE Group in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services;

(b) ~~any payments required by RBC under the existing credit facilities extended by RBC to certain of the OTE Group;~~ and

(c) ~~(b)~~ payment for goods or services actually supplied to the ~~Applicant~~OTE Group following the date of this Order.

9. ~~8.~~ THIS COURT ORDERS that the ~~Applicant~~OTE Group shall remit, in accordance with legal requirements, or pay:

(a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;

(b) all goods and services or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the ~~Applicant~~OTE Group in connection with the sale of goods and services by the ~~Applicant~~OTE Group, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and

(c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the ~~Applicant~~OTE Group.

10. ~~9.~~ THIS COURT ORDERS that until a real property lease is disclaimed ~~for resiliated~~<sup>4</sup> in accordance with the CCAA, the ~~Applicant~~OTE Group shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under

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<sup>4</sup> ~~The term "resiliate" should remain if there are leased premises in the Province of Quebec, but can otherwise be removed.~~

the lease) or as otherwise may be negotiated between the ~~Applicant~~OTE Group and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

11. ~~10.~~ THIS COURT ORDERS that, except as specifically permitted herein, the ~~Applicant~~isOTE Group ~~are~~ hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the ~~Applicant~~OTE Group to any of its creditors as of this date, save and except for RBC; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

### CARVE-OUT

12. THIS COURT ORDERS that RBC shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicants under the CCAA.

### RESTRUCTURING

13. ~~11.~~ THIS COURT ORDERS that the ~~Applicant~~OTE Group shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as hereinafter defined), have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of its business or operations, ~~{and to dispose of redundant or non-material assets not exceeding \$● in any one transaction or \$● in the aggregate}~~<sup>5</sup>;
- (b) ~~{~~terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate~~}~~; and

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<sup>5</sup>~~Section 36 of the amended CCAA does not seem to contemplate a pre-approved power to sell (see subsection 36(3)) and moreover requires notice (subsection 36(2)) and evidence (subsection 36(7)) that may not have occurred or be available at the initial CCAA hearing.~~

- (c) pursue all avenues of refinancing of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

all of the foregoing to permit the [Applicant OTE Group](#) to proceed with an orderly restructuring of the Business (the "**Restructuring**").

14. ~~12.~~ THIS COURT ORDERS that the [Applicant OTE Group](#) shall provide each of the relevant landlords with notice of the [Applicant OTE Group](#)'s intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the [Applicant OTE Group](#)'s entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the [Applicant OTE Group](#), or by further Order of this Court upon application by the [Applicant OTE Group](#) on at least two (2) days notice to such landlord and any such secured creditors. If the [Applicant OTE Group](#) disclaims ~~{or resiliates}~~ the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer ~~{or resiliation}~~ of the lease shall be without prejudice to the [Applicant OTE Group](#)'s claim to the fixtures in dispute.

15. ~~13.~~ THIS COURT ORDERS that if a notice of disclaimer ~~{or resiliation}~~ is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer ~~{or resiliation}~~, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the [Applicant OTE Group](#) and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer ~~{or resiliation}~~, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the [Applicant OTE Group](#) in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

## NO PROCEEDINGS AGAINST THE ~~APPLICANT~~ OTE GROUP OR THE PROPERTY

16. ~~14.~~ THIS COURT ORDERS that until and including ~~[DATE—MAX. 30 DAYS]~~ February 9, 2023, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court ~~or~~ tribunal, agency or other legal or, subject to paragraph 19, regulatory body (each, a "**Proceeding**") shall be commenced or continued against or in respect of the ~~Applicant~~ OTE Group or the Monitor or their respective employees and representatives acting in such capacities, or affecting the Business or the Property, except with the prior written consent of the ~~Applicant~~ OTE Group and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the ~~Applicant~~ OTE Group or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

17. THIS COURT ORDERS that the Stay Period does not apply to the rights and remedies of RBC as it pertains to security provided by the OTE Group in favour of RBC.

## NO EXERCISE OF RIGHTS OR REMEDIES

18. ~~15.~~ THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, regulatory body or agency, or any other entities (all of the foregoing, collectively being "Persons" and each being a "Person"), other than RBC, against or in respect of the ~~Applicant~~ OTE Group or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the ~~Applicant~~ OTE Group and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the ~~Applicant~~ OTE Group to carry on any business which the ~~Applicant~~ OTE Group is not lawfully entitled to carry on, (ii) subject to paragraph 19, affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

19. THIS COURT ORDERS that notwithstanding Section 11.1 of the CCAA, all rights and remedies of provincial and federal regulators and/or border authorities that have authority with respect to the importation and exportation of fuel, petroleum, diesel and/or gasoline against or in respect of the OTE Group or their respective employees and representatives acting in such capacities, or affecting the Business or the Property, are hereby stayed and suspended during the

Stay Period except with the written consent of the OTE Group and the Monitor, or leave of this Court on notice to the Service List, such that no licenses held by any of the OTE Group may be revoked or expire during the Stay Period and same are further extended during the course of these CCAA proceedings.

## **NO INTERFERENCE WITH RIGHTS**

20. ~~16.~~ THIS COURT ORDERS that during the Stay Period, 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 ~~Applicant~~OTE Group, except with the written consent of the ~~Applicant~~OTE Group and the Monitor, or leave of this Court.

## **CONTINUATION OF SERVICES**

21. ~~17.~~ THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the ~~Applicant~~OTE Group or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the ~~Applicant~~OTE Group, 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 ~~Applicant~~OTE Group, and that the ~~Applicant~~OTE Group shall be entitled to the continued use of its current premises, 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 ~~Applicant~~OTE Group in accordance with normal payment practices of the ~~Applicant~~OTE Group or such other practices as may be agreed upon by the supplier or service provider and each of the ~~Applicant~~OTE Group and the Monitor, or as may be ordered by this Court.

## **NON-DEROGATION OF RIGHTS**

22. ~~18.~~ THIS COURT ORDERS that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any

monies or otherwise extend any credit to the ~~Applicant~~OTE Group. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.<sup>6</sup>

## PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

23. ~~19.~~ THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the ~~Applicant~~OTE Group with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the ~~Applicant~~OTE Group whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the ~~Applicant~~OTE Group, if one is filed, is sanctioned by this Court or is refused by the creditors of the ~~Applicant~~OTE Group or this Court.

## DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

24. ~~20.~~ THIS COURT ORDERS that the ~~Applicant~~OTE Group shall jointly and severally indemnify ~~its~~their directors and officers against obligations and liabilities that they may incur as directors or officers of the ~~Applicant~~OTE Group after the commencement of the within proceedings,<sup>7</sup> except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

25. ~~21.~~ THIS COURT ORDERS that the directors and officers of the ~~Applicant~~OTE Group shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**")<sup>8</sup> on

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<sup>6</sup> ~~This non-derogation provision has acquired more significance due to the recent amendments to the CCAA, since a number of actions or steps cannot be stayed, or the stay is subject to certain limits and restrictions. See, for example, CCAA Sections 11.01, 11.04, 11.06, 11.07, 11.08, 11.1(2) and 11.5(1).~~

<sup>7</sup> ~~The broad indemnity language from Section 11.51 of the CCAA has been imported into this paragraph. The granting of the indemnity (whether or not secured by a Directors' Charge), and the scope of the indemnity, are discretionary matters that should be addressed with the Court.~~

<sup>8</sup> ~~Section 11.51(3) provides that the Court may not make this security/charging order if in the Court's opinion the Applicant could obtain adequate indemnification insurance for the director or officer at a reasonable cost.~~



the Property, which charge shall not exceed an aggregate amount of \$●250,000, as security for the indemnity provided in paragraph ~~{20}24~~ of this Order. The Directors' Charge shall have the priority set out in paragraphs ~~{38}36~~ and ~~{40}38~~ herein.

26. ~~22.~~ THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the ~~Applicant~~OTE Group's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph ~~{20}24~~ of this Order.

#### APPOINTMENT OF MONITOR

27. ~~23.~~ THIS COURT ORDERS that ~~{MONITOR'S NAME}~~KPMG is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the ~~Applicant~~OTE Group with the powers and obligations set out in the CCAA or set forth herein and that the ~~Applicant~~OTE Group and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the ~~Applicant~~OTE Group pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

28. ~~24.~~ THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the ~~Applicant~~OTE Group's receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- ~~(c) — assist the Applicant, to the extent required by the Applicant, in its dissemination, to the DIP Lender and its counsel on a [TIME INTERVAL] basis of financial and other information as agreed to between the Applicant and the DIP Lender which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lender;~~

- ~~(d) advise the Applicant in its preparation of the Applicant's cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel on a periodic basis, but not less than [TIME INTERVAL], or as otherwise agreed to by the DIP Lender;~~
- (c) ~~(e)~~ advise the ~~Applicant~~OTE Group in its development of the Plan and any amendments to the Plan;
- (d) ~~(f)~~ assist the ~~Applicant~~OTE Group, to the extent required by the ~~Applicant~~OTE Group, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (e) ~~(g)~~ have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the ~~Applicant~~OTE Group, to the extent that is necessary to adequately assess the ~~Applicant~~OTE Group's business and financial affairs or to perform its duties arising under this Order;
- (f) compel the production, from time to time, from any Person having possession, custody or control of any books, records, accountings, documents, correspondences or papers, electronically stored or otherwise, relating to the OTE Group (the "Requested Information");
- (g) require any Requested Information to be delivered within thirty (30) days of the Monitor's request or such a longer time period as the Monitor may agree to in its discretion;
- (h) conduct investigations from time to time, including examinations under oath of any Person reasonably thought to have knowledge relating to the Requested Information;
- (i) ~~(h)~~ be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and

(i) ~~(j)~~ perform such other duties as are required by this Order or by this Court from time to time.

29. ~~25.~~ THIS COURT ORDERS that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

30. ~~26.~~ THIS COURT ORDERS that nothing herein contained shall require the Monitor 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 Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor'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.

31. ~~27.~~ THIS COURT ORDERS that ~~that~~ the Monitor shall provide any creditor of the ~~Applicant and the DIP Lender~~ OTE Group with information provided by the ~~Applicant~~ OTE Group in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the ~~Applicant~~ OTE Group is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the ~~Applicant~~ OTE Group may agree.

32. ~~28.~~ THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or

obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

33. ~~29.~~ THIS COURT ORDERS that the Monitor, counsel to the Monitor and counsel to the ~~Applicant~~OTE Group shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the ~~Applicant~~OTE Group as part of the costs of these proceedings, whether incurred prior to, on, or subsequent to the date of this Order, by the OTE Group as part of the costs of these proceedings. The ~~Applicant~~OTE Group is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the ~~Applicant~~OTE Group on a ~~[TIME INTERVAL]~~weekly basis and, in addition, the Applicant is hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Applicant, retainers in the approximate amount[s] of \$~~•[-, respectively,]~~950,000 to be held by them as security for payment of their respective fees and disbursements outstanding ~~from time to time~~for certain pre- and post-filing costs.

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

### ADMINISTRATION CHARGE

35. ~~31.~~ THIS COURT ORDERS that the Monitor, counsel to the Monitor, ~~if any,~~ and the ~~Applicant~~OTE Group's counsel shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$~~•~~500,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs ~~{38}~~36 and ~~{40}~~hereof.

### **DIP FINANCING**

~~32. — THIS COURT ORDERS that the Applicant is hereby authorized and empowered to obtain and borrow under a credit facility from [DIP LENDER'S NAME] (the "DIP Lender") in order to finance the Applicant's working capital requirements and other general corporate purposes and~~

capital expenditures, provided that borrowings under such credit facility shall not exceed \$● unless permitted by further Order of this Court.

33. — THIS COURT ORDERS THAT such credit facility shall be on the terms and subject to the conditions set forth in the commitment letter between the Applicant and the DIP Lender dated as of [DATE] (the "Commitment Letter"), filed.

34. — THIS COURT ORDERS that the Applicant is hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "Definitive Documents"), as are contemplated by the Commitment Letter or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicant is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the Commitment Letter and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

35. — THIS COURT ORDERS that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "DIP Lender's Charge") on the Property, which DIP Lender's Charge shall not secure an obligation that exists before this Order is made. The DIP Lender's Charge shall have the priority set out in paragraphs [38] and [40]38 hereof.

36. — THIS COURT ORDERS that, notwithstanding any other provision of this Order:

- (a) — the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents;
- (b) — upon the occurrence of an event of default under the Definitive Documents or the DIP Lender's Charge, the DIP Lender, upon ● days notice to the Applicant and the Monitor, may exercise any and all of its rights and remedies against the Applicant or the Property under or pursuant to the Commitment Letter, Definitive Documents and the DIP Lender's Charge, including without limitation, to cease making advances to the Applicant and set off and/or consolidate any amounts owing by the DIP Lender to the Applicant against the obligations of the Applicant to the DIP Lender under the Commitment Letter, the Definitive Documents or the DIP Lender's Charge, to make

~~demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicant and for the appointment of a trustee in bankruptcy of the Applicant; and~~

~~(e) — the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicant or the Property.~~

~~37. — THIS COURT ORDERS AND DECLARES that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicant under the CCAA, or any proposal filed by the Applicant under the Bankruptcy and Insolvency Act of Canada (the "BIA"), with respect to any advances made under the Definitive Documents.~~

#### **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

~~36. 38.~~ THIS COURT ORDERS that the priorities of the existing security held by RBC (the "RBC Security"), the Directors' Charge, and the Administration ~~Charge and the DIP Lender's~~ Charge, as among them, shall be as follows<sup>9</sup>:

First – RBC Security;

Second – Administration Charge ~~(to the maximum amount of \$●)~~;

~~Second — DIP Lender's Charge~~; and

Third – Directors' Charge ~~(to the maximum amount of \$●)~~.

~~37. 39.~~ THIS COURT ORDERS that the filing, registration or perfection of the Directors' Charge, the Administration Charge or the ~~DIP Lender's Charge~~ RBC Security (collectively, the

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<sup>9</sup> ~~The ranking of these Charges is for illustration purposes only, and is not meant to be determinative. This ranking may be subject to negotiation, and should be tailored to the circumstances of the case before the Court. Similarly, the quantum and caps applicable to the Charges should be considered in each case. Please also note that the CCAA now permits Charges in favour of critical suppliers and others, which should also be incorporated into this Order (and the rankings, above), where appropriate.~~

"Charges") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

38. ~~40.~~ THIS COURT ORDERS that each of the Directors' Charge, the Administration Charge and the ~~DIP Lender's Charge~~ RBC Security (all as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "Encumbrances") in favour of any Person.

39. ~~41.~~ THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the ~~Applicant~~ OTE Group shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Directors' Charge, the Administration Charge or the ~~DIP Lender's Charge~~ RBC Security, unless the ~~Applicant~~ OTE Group also obtains the prior written consent of the Monitor, ~~the DIP Lender~~ and the beneficiaries of the Directors' Charge, the RBC Security and the Administration Charge, or further Order of this Court.

40. ~~42.~~ THIS COURT ORDERS that the Directors' Charge, the Administration Charge, ~~the Commitment Letter, the Definitive Documents~~ and the ~~DIP Lender's Charge~~ RBC Security shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "Chargees") ~~and/or the DIP Lender thereunder~~ shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "Agreement") which binds the ~~Applicant~~ OTE Group, and notwithstanding any provision to the contrary in any Agreement:

- (a) ~~neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Commitment Letter or the Definitive Documents~~ shall not create or be deemed to constitute a breach by the ~~Applicant~~OTE Group of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the ~~Applicant~~OTE Group entering into the ~~Commitment Letter, the~~ creation of the Charges, ~~or the execution, delivery or performance of the Definitive Documents~~; and
- (c) the payments made by the ~~Applicant~~OTE Group pursuant to this Order, ~~the Commitment Letter or the Definitive Documents~~, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

41. ~~43.~~ THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the ~~Applicant~~OTE Group's interest in such real property leases.

## SERVICE AND NOTICE

42. ~~44.~~ THIS COURT ORDERS that the Monitor shall (i) without delay, publish in ~~[newspapers specified by the Court]~~the Globe and Mail (National Edition) a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the ~~Applicant~~OTE Group of more than \$1000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

43. THIS COURT ORDERS that the Monitor shall create, maintain and update as necessary a list of all Persons appearing in person or by counsel in this proceeding (the "Service List"). The Monitor shall post the Service List, as may be updated from time to time, on the Monitor's website as part of the public materials to be recorded thereon in relation to this proceeding.



Notwithstanding the foregoing, the Monitor shall have no liability in respect of the accuracy of or the timeliness of making any changes to the Service List.

44. ~~45.~~ THIS COURT ORDERS that the E-Service Protocol of the Commercial List (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

~~<http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>~~<http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) 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://home.kpmg/ca/en/home/services/advisory/deal-advisory/creditorlinks/original-traders-energy-group.html>>’.

45. ~~46.~~ THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the ~~Applicant~~[OTE Group](#) and the Monitor are 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 the ~~Applicant~~[OTE Group](#)’s creditors or other interested parties at their respective addresses as last shown on the records of the ~~Applicant~~[OTE Group](#) 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.

## **GENERAL**

46. ~~47.~~ THIS COURT ORDERS that the ~~Applicant~~[OTE Group](#) or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

47. ~~48.~~ THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the ~~Applicant~~OTE Group, the Business or the Property.

48. ~~49.~~ 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 ~~Applicant~~OTE Group, the Monitor and their respective 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 ~~Applicant~~OTE Group and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the ~~Applicant~~OTE Group and the Monitor and their respective agents in carrying out the terms of this Order.

49. ~~50.~~ THIS COURT ORDERS that each of the ~~Applicant~~OTE Group and the Monitor 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 Monitor 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.

50. ~~51.~~ THIS COURT ORDERS that any interested party (including the ~~Applicant~~OTE Group and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

51. ~~52.~~ THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

52. THIS COURT ORDERS that this Order is effective from today's date and is enforceable without the need for entry or filing.

## SEALING RELIEF

53. THIS COURT ORDERS that the Second Hill Affidavit shall and is hereby sealed, kept confidential, and shall not form part of the public record pending further Order of this Court.

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IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, C. C-36, AS AMENDED AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF ORIGINAL TRADERS ENERGY LTD. AND 2496750 ONTARIO INC.

Court File No.

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**  
**Proceedings commenced at Toronto**

**INITIAL ORDER**

**AIRD & BERLIS LLP**

Barristers and Solicitors

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

B E T W E E N :

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, C. C-36,  
AS AMENDED

AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF **ORIGINAL TRADERS  
ENERGY LTD. AND 2496750 ONTARIO INC.**

Applicants

**AFFIDAVIT OF SCOTT HILL  
(Sworn January 27, 2023)**

I, Scott Hill of the City of Wilsonville, in the Province of Ontario, MAKE OATH AND SAY AS  
FOLLOWS:

**I. INTRODUCTION**

1. I am the president of Original Traders Energy Ltd. ("**OTE GP**"), the general partner of Original Traders Energy LP ("**OTE LP**"). I have been the president of OTE GP since August of 2022. From 2018 until that date, I was a vice-president of development of OTE LP. Since becoming president, I have become aware of the financial and other operational aspects of the Applicants' business. From the inception of the Applicants' business until his sudden resignation on July 14, 2022, Glenn Page was the president of OTE GP and exercised complete financial and operational control over OTE LP and OTE GP's business affairs.

2. This affidavit is made in support of an application by the Applicants for an Initial Order and related relief under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the "**CCAA**"). While the Limited Partnerships (term as defined below) are not Applicants in this proceeding, the Applicants seek to have relief sought within the draft initial order under the CCAA extend to the Limited Partnerships, which are related to and carry on operations that are integral to the business of the Applicants. The terms "**OTE Group**" and "**Applicants**" used throughout this affidavit refer to the Applicants and Limited Partnerships collectively.

3. OTE LP is a limited partnership formed under the laws of the Province of Ontario. The limited partners of OTE LP are me, my brother Donald Herbert Miles Hill ("**Miles Hill**"), 2584861 Ontario Inc.,

2590086 Ontario Ltd. and IMA Enterprises Inc. The officers and directors of OTE GP are Miles Hill and myself.

4. OTE Logistics LP (“**OTE Logistics**” and with OTE LP, the “**Limited Partnerships**”) is a limited partnership formed under the laws of the Province of Ontario, the general partner of which is 2496750 Ontario Inc. (“**249**”). The limited partners of OTE Logistics LP are me, Miles Hill, Glenn Page and 7069847 Canada Limited. The sole officer and director of 249 is Miles Hill.

5. On the basis of the above, I have personal knowledge of the matters to which I depose in this Affidavit, including the business and financial affairs of the Applicants, except where I have obtained information from others or where the information is stated to be based on information and belief. Where I have obtained information from others, I have stated the source of my information and, in all such cases, believe such information to be true. In some instances, the information is based on a reconstruction of the books and records from the best information currently available to the OTE Group, as a result of the removal and/or destruction of the OTE Group’s books and records upon Glenn Page’s resignation from the OTE Group described below. In such instances, I have identified where the information is the best reconstruction of the Applicants’ financial information and the source materials from which such information has been made available.

6. In preparing this Affidavit, I consulted with the Applicants’ legal and financial advisors and reviewed relevant documents and information concerning the Applicants’ operations, financial affairs and marketing activities. I am authorized to swear this Affidavit as the corporate representative of the Applicants.

7. All references to monetary amounts in this Affidavit are in Canadian dollars unless noted otherwise. In addition, the use of the defined term “Reserve” throughout this Affidavit is as per its legal usage and definition in the *Indian Act*, R.S.C. 1985, c. I-5 (the “**Indian Act**”).

## **II. OVERVIEW AND THE URGENT NEED FOR RELIEF**

8. OTE GP is a wholesale fuel supplier which mainly services First Nations’ petroleum stations and First Nations’ communities across Ontario. OTE GP has operated in the First Nations fuel supply industry (the “**Fuel Industry**”) since April of 2018. The Fuel Industry in Canada is regulated from several perspectives, including (without limitation) at the Provincial level to ensure that the industry’s participants are complying with their tax obligations to the Ontario Ministry of Finance (the “**MOF**”).

9. OTE GP services a total of over thirty gas stations throughout Southern Ontario. The majority of these gas stations are situated on 9 different First Nations Reserves in Southern Ontario. A list of the key municipal addresses and relevant First Nations associated with the gas stations is attached hereto at **Exhibit "A"**. The OTE Group services these locations by purchasing bulk fuel or blended fuel, and then blending (where required for regular fuel and not for premium/diesel), supplying and distributing gasoline, diesel and fuel products throughout Ontario. If there are supply issues, blending does not always occur through the OTE Group, and sourcing can occur locally.

10. Soon after becoming president of OTE GP, I became aware of alarming circumstances which threatened the survival of the Applicants' business. In particular:

- (a) At various times during 2021 and 2022, Glenn Page and others had misappropriated millions of dollars from OTE LP's funds, and misused its credit, including for the purchase of a 70 foot motor yacht and lavish personal travel expenses for Glenn Page and his spouse, Mandy Cox;
- (b) On June 6, 2022, Glenn Page had provided to one of the Applicants' secured creditors, Royal Bank of Canada ("**RBC**"), falsified unaudited financial statements of OTE LP dated December 31, 2021, in response to its request for financial disclosure. Those financial statements purported to be on the letterhead of OTE LP's accountants, Pettinelli Mastroluisi, but in fact Pettinelli had never issued any such financial statements;
- (c) OTE LP was notified by the MOF in the summer of 2022 that OTE LP had failed to submit payments or remittances for provincial gasoline tax and fuel tax, and/or the returns associated with these taxes. A copy of certain prior correspondence sent by the MOF to the OTE Group is attached hereto at **Exhibit "B"**. OTE LP had also failed to remit Canadian federal tax on fuel sold. OTE LP's apparent liability for unpaid taxes which were to have been collected and remitted as at August 2022 exceeded \$27,000,000;
- (d) After I became president, and into early September of 2022, the Applicants' personnel were locked out of their business information systems, which continued to be controlled by Glenn Page and others. Although the Applicants' personnel had operational access to those systems prior to Glenn Page's resignation, their user credentials and authorizations were ultimately in his control and were terminated by him. This continued despite his resignation. Glenn Page and others directed by him frustrated and delayed efforts by the

Applicants' personnel to obtain user credentials and authorizations to control and maintain those systems;

- (e) The business records of the Applicants had not been maintained at the head office of OTE LP, but were primarily in the possession of Glenn Page and others directed by him at an office they had set up in Burlington, Ontario. The Applicants' personnel did not have access to that office or to many business records which were under the control of Glenn Page, including accounting, payroll, purchasing, logistics, IT services, document creation and retention, and email communications;
- (f) When the Applicants' personnel were able to obtain user credentials for and control over its business information systems, we discovered that Glenn Page and others had deleted the contents of their email inboxes for OTE LP and OTE Logistics; and
- (g) The financial information and records of the Applicants for the entire period from January 1, 2021, to August 31, 2022, are unreliable and incomplete.

11. On October 12, 2022, OTE LP, OTE GP, OTE Logistics, Miles Hill and I commenced an action against Glenn Page and those who worked with him on the basis of their breaches of duty and other misconduct in connection with the business and affairs of the Applicants, which is further discussed herein. The relief sought in that action includes accounting, tracing and disgorgement of any funds of the Applicants which were wrongly converted.

12. On October 4, 2022, OTE LP engaged KPMG to assist the Applicants with stabilizing their financial functions and implementing proper and efficient business processes, with a view to repairing the significant damage done to the Applicants' business and stakeholder group. I believe that the creditors and stakeholders of the Applicants ultimately will benefit from these endeavors, which will take some time to be completed. They will further assist in determining whether certain taxes were actually collected from OTE LP customers while Glenn Page was in control of the Applicants' business, and if so, where those funds are now located.

13. Currently, based on the Cash Flow Forecast (as defined below), the OTE Group will have sufficient cash and credit to sustain operations during the course of the CCAA proceedings. The Applicants, with the assistance of their legal and financial advisors, have engaged in extensive efforts in Q4 of 2022 to improve OTE GP's liquidity position, and to review strategic options to address its financial position on a go forward basis to ensure sustained financial viability. While the Applicants

presently have enough cash for the CCAA proceedings, this cash-flow is insufficient to provide for the payment of all due and owing obligations. The Applicants further believe that the present financial structure is only sustainable if they can (a) negotiate pricing changes for OTE GP, which negotiations have occurred and are ongoing with certain suppliers, with KPMG's assistance, and (b) restructure operations, including cost cutting and renegotiating certain existing contracts. Given the forecasted sales volume, the Applicants believe that their constrained financial position is temporary and that the OTE Group has a viable financial outlook for the future.

14. The OTE Group's financial challenges are complicated by its debts to regulators and taxation authorities. Operation of the OTE Group is dependent on the existence of certain licences, as discussed in greater detail below. The revocation of these licenses, which are necessary for the OTE Group to carry on business in the Fuel Industry in Ontario, would render the OTE Group's restructuring impossible and result in an immediate closure of the business and dismissal of employees.

15. The regulatory and tax landscape in which the OTE Group operates its business is complex. In addition to the known debts to the MOF detailed herein, the OTE Group anticipates that it will owe significant amounts to the Canada Revenue Agency ("CRA") for excise tax and federal carbon tax following the completion of an ongoing audit. In addition, CRA has issued to OTE LP a notice to pay pursuant to the *Customs Act* in the sum of \$19,376,773.59, directing payment to the Canadian Border Services Agency ("CBSA"). As a result of Glenn Page's mismanagement of the business and destruction of or failure to keep adequate books and records, the OTE Group is currently faced with significant uncertainty regarding the specifics of the obligations it owes to taxation authorities.

16. The Applicants therefore believe that the commencement of the within CCAA proceedings is in the best interests of the Applicants to allow them to stabilize their business, review and assess creditors' claims, and consider and advance potential restructuring alternatives for the benefit of all stakeholders. This affidavit is thus sworn in support of an application by the Applicants for protection from their creditors pursuant to the CCAA.

17. The Applicants are seeking an order (the "**Initial Order**") *inter alia*:

- (a) declaring that OTE GP and 249 are entities to which the CCAA applies;
- (b) declaring that the Limited Partnerships enjoy the benefit of the protections provided to the Applicants under the Initial Order;
- (c) granting an administration charge of \$500,000.00 (the "**Administration Charge**");

- (d) granting a directors' charge of \$250,000.00 (the "**Directors' Charge**" and together with the Administration Charge (the "**Priority Charges**"<sup>1</sup>));
- (e) granting an initial stay of proceedings to February 9, 2023 (the "**Stay Period**");
- (f) appointing KPMG Inc. as an officer of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") to monitor the business and financial affairs of the Applicants ("**KPMG**" and in such capacity, the "**Monitor**") with the additional power to compel documents, evidence and witnesses;
- (g) ordering the stay and suspension of all rights and remedies of any regulators which have authority in respect of regulations pertaining to the fuel and/or gasoline industry ("**Regulators**") against the OTE Group, or their respective employees and representatives acting in such capacities, or affecting their business or property, except with the written consent of the OTE Group, the Monitor and on notice to the service list, or leave of the Court;
- (h) authorizing payments to certain critical suppliers for pre-filing expenses up to a maximum aggregate amount of \$6,375,000 (the "**Pre-Filing Critical Supplier Payments**"), any such payment to be made only with the consent of the Monitor and the Applicants, and as are necessary to facilitate the Applicants' ongoing operations and preserve value during the CCAA proceedings;
- (i) sealing the second affidavit of Scott Hill sworn January 27, 2023, which contains information that has been sealed by court order in another jurisdiction; and
- (j) such further and other relief as this Court may deem just and equitable.

18. If the Initial Order is granted, the Applicants intend to return to Court as soon as possible (the "**Comeback Hearing**") to seek the issuance of an order (the "**Amended and Restated Initial Order**"), which may include the below relief, *inter alia*:

- (a) extend the Stay Period;
- (b) increase the amount of the Priority Charges; and

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<sup>1</sup> These charges are subject and subordinate to the existing charge maintained through the RBC Forbearance Agreement (term as later defined herein).



(c) seek other relief as may be appropriate at that time.

19. For these reasons and the reasons set out herein, I do verily believe that the Applicants are entities to which the CCAA applies.

### III. BACKGROUND REGARDING THE APPLICANTS

#### *A. Organizational Structure*

20. The OTE Group is a group of affiliated privately-held companies which are engaged in the business of supplying fuel to First Nations communities. OTE GP primarily manages and operates the Applicants' business, including the rail cars, tankers and vehicles used to transport bulk fuel and distribute fuel to customers. OTE Logistics operates the distribution network of the truck supply chain.

21. The Applicants' former officers and directors who are named as defendants to the litigation have resigned, as follows:

- (a) on or about July 14, 2022, Glenn Page resigned from his role as an officer and a director of OTE GP. Prior to that time, he was an officer and director, or alternately a *de facto* officer and director of OTE GP, OTE LP and OTE Logistics, such that he had complete executive and operational control of the OTE Group, including managing all banking transactions; and
- (b) until August of 2022, Brian Page, Glenn Page's brother, was employed as a contract worker by OTE Logistics and/or OTE LP. He held the role of vice-president of OTE Logistics, although he was never officially an officer or director of OTE GP or 249.

22. A description of each of the Applicants, along with reference to remaining directors and officers, is set out below.

#### i. OTE LP

23. OTE LP was created to operate the business of purchasing bulk fuel, and blending specific fuel products to be sold to retail gas stations.

24. OTE LP was formed under the *Limited Partnership Act* (Ontario) on August 30, 2017 which partnership registration expires on August 28, 2027. A copy of OTE LP's partnership profile is attached hereto at **Exhibit "C"**.

25. OTE LP's registered office is 7273 Indian Line, Six Nations of the Grand River Territory, Scotland, Ontario, and its stated activity is in the business of: "[p]etroleum, petroleum products, and other hydrocarbons merchant wholesalers".

ii. OTE GP

26. OTE GP was initially incorporated under the *Business Corporations Act* (Ontario) on July 5, 2017. A copy of OTE GP's corporate profile is attached hereto at **Exhibit "D"**.

27. OTE GP's registered office is located at 7273 Indian Line, Six Nations of the Grand River Territory, Scotland, Ontario, and its officer and directors are Miles Hill and myself.

28. OTE GP is the general partner of OTE LP. A copy of the partnership agreement dated July 5, 2017 between OTE GP and the limited partners described therein is attached hereto and marked as **Exhibit "E"** to this Affidavit.

iii. OTE Logistics

29. As the business of OTE Group evolved, a new limited partnership, Gen 7 Fuel Management Services LP ("**Gen 7**") was established on April 24, 2018 under the *Limited Partnership Act* (Ontario), to operate the transportation and logistics side of the fuel distribution business; the limited partnership is set to expire on April 21, 2023. I invented the "Gen 7" element of that name to reinforce the Indigenous business model and value base of the OTE Group. A copy of OTE Logistics' partnership profile is attached hereto at **Exhibit "F"**.

30. Gen 7 has undergone several name changes since its inception. Prior names include Gen7 Logistics Services LP, as well as the business name "Gen7 Logistics". As of January 20, 2022, its current name is OTE Logistics LP ("**OTE Logistics**").

31. OTE Logistics' registered office is 1110 Highway 54, A, Caledonia, Ontario and its listed activity is in the business of "[g]asoline stations".

32. 249 is the general partner of OTE Logistics. A copy of the partnership agreement dated in March of 2018 between OTE Logistics and the limited partners described therein is attached hereto and marked as **Exhibit "G"** to this Affidavit.

iii. 249

33. 249 is an Ontario corporation incorporated under the *Business Corporations Act* (Ontario) on December 17, 2015 with a registered office at 7273 Indian Line, Six Nations of the Grand River Territory in Scotland, Ontario at N0E1R0.

34. The sole director of 249 is Miles Hill. A copy of 249's corporate profile is attached hereto at **Exhibit "H"**.

iv. Non-Applicant Entities

35. OTE USA LLC ("**OTE USA**") and OT Energy Inc. ("**OTE Michigan**") are non-Applicant entities that are controlled by Glenn Page. OT Michigan is the majority shareholder of OTE USA.

36. Both OTE USA and OTE Michigan are limited liability companies organized under the laws of Michigan in the United States on December 22, 2020. A copy of both of their corporate profiles are attached hereto at **Exhibit "I"**.

37. Both OTE USA and OTE Michigan are named as defendants in ongoing litigation in Ontario, as discussed further herein. As referenced further in the Page Claim (term as defined below), the plaintiffs allege that certain defendants to the Page Claim may have received significant U.S. tax refunds that should have been appropriately directed to OTE LP.

***B. Physical Operations***

38. The OTE Group operates out of four Operating Locations (term as defined below), with a fifth location, the Couchiching Location, being partially constructed.

39. The Operating Locations are all rented on various First Nations territory and are located on Reserve. These sites include a head office site, as well as four blending facilities. As described further below, the Operating Locations and the Couchiching Location are as follows:

- (a) a head office in the Six Nations of the Grand River Territory of Scotland, Ontario (the "**Head Office**"), located at the municipal address of 7273 Indian Line, Scotland, Ontario;
- (b) a blending center in the Six Nations of the Grand River Territory of Scotland, Ontario (the "**Six Nations Blending Location**"), located at the municipal address of 7263 Indian Line, Scotland, Ontario;

- (c) a blending centre in Tyendinaga Mohawks of Bay of Quinte of Shannonville, Ontario (the “**Tyendinaga Blending Location**”), located at the municipal address of 184 Industrial Park Rd., Shannonville, Ontario;
- (d) a blending centre in Atikameksheng Anishnawbek Territory of Naughton, Ontario (the “**Whitefish Blending Location**”, and with (a) to (c) above, the “**Operational Locations**”), located at the municipal address of Lots 13, 14 and 15 of Business Park Road, Chi-Zhiingwaak Business Park in Naughton, Ontario; and
- (e) a blending centre currently under construction in Couchiching First Nation Territory of Fort Frances, Ontario (the “**Couchiching Location**”), located at the municipal address of Frog Creek Road in Fort Frances, Ontario.

40. OTE LP’s first blending facility was constructed at the Six Nations Blending Location, which began operations in the spring of 2018. This was followed by the construction of the Tyendinaga Blending Location, which commenced operation in the summer of 2020. OTE LP constructed the Whitefish Blending Location and began operations in January of 2022. A fourth facility is under construction at the Couchiching Location. Details of these properties are set out further herein.

41. Rent is current on all of the Operating Locations discussed herein.

i. Head Office Property and Six Nations Blending Location

42. The Head Office is the facility from which OTE LP offers its in-person customer services. The Head Office and Six Nations Blending Location lands are all owned by Scott Hill.

43. There are informal, oral lease agreements in place for these properties. All locations are current on their rent.

ii. Tyendinaga Blending Location

44. The Tyendinaga Blending Location is a facility from which OTE LP has operated a blending facility. The Tyendinaga Blending Location is owned by Tom Maracle (the “**Tyendinaga Landlord**”) pursuant to certificates of possession numbered 403018621 and 403018622 over Tyendinaga Mohawk Territory lands.

45. OTE LP negotiated a lease agreement dated February 18, 2020 with the Tyendinaga Landlord (the “**Tyendinaga Lease**”). A copy of the Tyendinaga Lease is attached hereto as **Exhibit “J”**. The

Tyendinaga Lease is a “completely carefree net lease” (s. 1.3) to the Tyendinaga Landlord, and is not registered by the Landlord or Tenant (terms as defined in the Tyendinaga Lease) under the Indian Land Registry as it is not a lease entered into pursuant to Indian Act.

46. As stated at s. 3.1 of the Tyendinaga Lease, the monthly net rent payable on the Tyendinaga Lease was originally \$2,280.00 due the first day of each month during the Term (term as defined in the Tyendinaga Lease). The Tyendinaga Lease further contains additional basic rent provisions (s. 3.2) for fuel shipment amounts, and also allows rent increases as agreed between the Tyendinaga Landlord and OTE LP or, failing an agreement, annual increases at the same percentage increase to the Commercial Price index for Canada.

47. Effective as of January 1, 2023, the monthly rent over the Tyendinaga Blending Location is \$6,500 per month. In addition, there is currently no lease existing for a new building located at the Tyendinaga Blending Location site. The Tyendinaga Landlord also receives royalties at a rate of \$0.005/L regarding the Tyendinaga Blending Location.

ii. Whitefish Blending Location

48. The Whitefish Blending Location is a facility from which OTE LP has operated a blending facility. Chi-Zhiingwaak Business Parking (the “**Whitefish Landlord**”) is the sub-landlord of the Whitefish Blending Location.

49. OTE LP negotiated a lease agreement dated August 24, 2021 with the Whitefish Landlord (the “**Whitefish Lease**”). A copy of the Whitefish Lease is attached hereto as **Exhibit “K”**. A key provision of the lease includes the warranty by the Landlord that the Atikameksheng Anishnawbek Band Council passed all requisite band council resolutions and all steps legally required to permit the grant of the Whitefish Lease, in light of ownership rights under the *First Nation Land Management Act*, S.C. 1999, c. 24.

50. As stated at s. 2(b) of the Whitefish Lease, the monthly net rent payable on the Whitefish Lease for the first five years of the Term (as defined in the Whitefish Lease) is the sum of \$138,600 per annum, payable monthly in advance in equal installments of \$11,550 commencing on September 1, 2021 for the first day of each and every month, and with administrative and other fees, totals \$12,729.83 per month. The Whitefish Landlord also receives royalties at a rate of \$0.0025/L pursuant to the Whitefish Lease.

iii. Couchiching Location

51. The Couchiching Location is a partially-constructed facility.

52. The Couchiching Location is neither an asset nor a property of the OTE Group, but is effectively a trespass on Reserve that was constructed to partial completion on Glenn Page's instruction without any lease or written contract of any kind between parties. Details involving the Couchiching Location and the litigation around it are included later under the Claybar Claim section of this Affidavit (term as defined below). At this time, the OTE Group does not intend to proceed with its construction as no feasibility study over the location was ever completed.

vi. US Lease Guarantee

53. As referenced in the Page Claim, OTE LP guaranteed a US lease in respect of premises out of which OTE USA operates (the "US Lease"). A copy of the commercial lease application of OTE USA signed by Brian Page for its premises is attached hereto at **Exhibit "L"**. I have not been able to locate an executed copy of the US Lease or associated guarantee.

54. At the time of execution of the commercial lease application, Brian Page was not authorized to sign on behalf of OTE LP. The US Lease relates to the municipal address of 200-1504 Grand River Avenue, East Lansing, Michigan in the United States.

55. As noted in the Page Claim (term as defined herein), OTE LP disputes that the guarantee was obtained legitimately and, accordingly, whether it is enforceable. Furthermore, the Page Claim alleges that OTE USA had been purchasing and reselling bulk fuel to OTE LP at a profit, and has been charging OTE LP U.S. excise taxes, despite OTE LP holding an exempt status at-law. These issues continue to be the subject of ongoing litigation.

***C. Employees***

56. An overview of the OTE Group's employees located across certain of their premises is as follows:

Function	Location	Address	Leased/Owned	Number of Employees
Head Office	Six Nations of the Grand River Territory of Tyendinaga, ON	7273 Indian Line, Scotland, Ontario	Leased from related party	13
Six Nations Blending Location	Six Nations of the Grand River Territory, ON	7273 Indian Line, Scotland, Ontario	Leased from related party	17
Tyendinaga Blending Location	Tyendinaga Mohawks of Bay of Quinte of Shannonville, ON	184 Industrial Park Rd., Shannonville, Ontario	Leased from unrelated party	14
Whitefish Blending Location	Atikameksheng Anishnawbek Territory of Naughton, ON	Lots 13, 14 and 15 of Business Park Road, Chi-Zhiingwaak Business Park in Naughton, Ontario	Leased from unrelated party	15

57. Across all the locations, the Applicants have 58 employees and 1 part-time employee; 1 employee has been laid off.

58. The OTE Group’s employees are not unionized. Hourly employees are paid weekly, one week in arrears. Payments to hourly employees are current based on the payroll schedule. Salaried employees are paid weekly, one week in arrears.

59. The Applicants’ employees do not benefit from a company-backed pension plan, are not represented by a union and are not subject to a collective bargaining agreement. All the employees are residents of the First Nations communities they work in.

***D. Licenses***

***i. Fuel Licenses***

60. Pursuant to the *Fuel Tax Act*, R.S.O. 1990, c. F. 35, OTE LP holds the following licenses (the “**Fuel Licenses**”):

- (a) An exporter license (the “**Exporter License**”) from the MOF. The Exporter License was most recently issued on November 1, 2022. Attached hereto and marked as **Exhibit “M”** is a copy of the Exporter License.
- (b) An importer license (the “**Importer License**”) from the MOF. The Importer License was issued on November 1, 2022. Attached hereto and marked as **Exhibit “N”** is a copy of the Importer License.

- (c) An interjurisdictional transporter license (the “**IT License**”) from the MOF. The IT License was issued on November 1, 2022. Attached hereto and marked as **Exhibit “O”** is a copy of the IT License.

61. The Fuel Licences permit OTE LP to conduct business as an exporter, importer and interjurisdictional transporter of fuel products within and out of Ontario, respectively.

#### ii. Gas Licenses

62. Pursuant to the *Gasoline Tax Act*, R.S.O. 1990, c. G. 5, OTE LP holds the following licenses (the “**Gas Licenses**”):

- (a) An importer license (the “**Gas Importer License**”) from the MOF. The Gas Importer License was issued on November 1, 2022. Attached hereto and marked as **Exhibit “P”** is a copy of the Gas Importer License.
- (b) An interjurisdictional transporter license (the “**Gas IT License**”) from the MOF. The Gas IT License was issued on November 1, 2022. Attached hereto and marked as **Exhibit “Q”** is a copy of the Gas IT License.

63. The Gas Licences permit OTE LP to conduct business as an importer and interjurisdictional transporter of gasoline products for the purpose of moving gasoline products in bulk within and out of Ontario.

#### iii. CBSA

64. As referenced above, on or about December 6, 2022, OTE LP was sent a Notice of Arrears in the amount of \$19,376,773.59 by CRA with payment to be made to the CBSA (the “**Notice of Arrears**”, respectively). A copy of the Notice of Arrears is attached hereto at **Exhibit “R”**.

65. As stated in the Notice of Arrears, failed payment by OTE LP risks further action being taken against OTE LP under the *Customs Act*, RSC 1985, c. 1 (2<sup>nd</sup> Supp), and the Notice of Arrears is authorized under s. 97.22(1) of the *Customs Act*.

66. The Proposed Monitor continues to work with the OTE Group to understand the Notice of Arrears and any potential liability associated with it.



***E. Cash Management System***

67. The Applicants’ cash management system (the “**Cash Management System**”), including the collection, transfer and disbursement of funds, is administered from the Head Office in Ontario, and is as described in the table below. The Applicants hold the following bank accounts, with the following balances as of January 17, 2022:

<b>Account Name</b>	<b>Bank</b>	<b>Transit</b>	<b>Account Number</b>	<b>Balance</b>	<b>Currency</b>
OTE Logistics	003	01144	1008705	40,661.92	CAD
OTE Logistics	003	01144	4001624	5,631.40	USD
Original Traders Energy LP	003	01144	1011436	631,813.70	CAD
Original Traders Energy LP	003	01144	1012798	1,843,677.04	CAD
Original Traders Energy LP	003	01802	1046820	5,950,180.58	CAD
Original Traders Energy LP	003	01144	4001640	47,759.58	USD

68. In connection with the CCAA proceedings, the Applicants are seeking authority to continue to operate the Cash Management System. The continued operation of the Cash Management System will minimize disruption caused by the CCAA proceedings and avoid the need to negotiate and implement alternative banking protocols. The Cash Management System includes the necessary accounting controls to enable the Applicants and KPMG to trace funds and ensure that all transactions are adequately documented and readily ascertainable.

***F. Misconduct Litigation***

69. As noted above, the OTE Group’s financial difficulties and insolvency have been, in part, precipitated by the alleged misconduct of past executives and employees. This potential misconduct has resulted in an informational crisis suffered by the OTE Group, and raised suspicion over potentially preferential related party dealings. Litigation has already commenced in Ontario and another U.S. jurisdiction (claim currently under seal) to pursue damages stemming from the OTE Group’s claims against such defendants. I have therefore executed a second Affidavit sworn January 27, 2023 (the “**Second Hill Affidavit**”), which contains the second sealed action, for use and review by this Court in these CCAA proceedings. I have instructed my counsel to seek a sealing order from this Court as the Second Hill Affidavit contains material which is subject to a Court-ordered seal in a U.S. jurisdiction.

**a. Ontario Litigation**

70. Via statement of claim issued on October 12, 2022 under Court File No. CV-22-00688572-0000, OTE GP, OTE LP, OTE Logistics LP, myself and Miles Hill commenced an action (the “**Page Claim**”) against Glenn Page (“**Page**”) and 23 other defendants for various damages, including unjust enrichment, fraud, breach of fiduciary duty, breach of statutory duty and breach of contract. A copy of the Page Claim is attached hereto and marked as **Exhibit “S”**.

71. Terms used herein but not defined are as used within the Page Claim.

72. As set out in the Page Claim, the named defendants include:

- (a) Glenn Page;
- (b) Mandy Cox (“**Cox**”), Glenn Page’s spouse who was employed by, *inter alia*, OTE Logistics and OTE LP, and was also promoted by Glenn Page to the position of office manager;
- (c) Brian Page (“**Brian Page**”) who was employed as a contract worker by OTE Logistics and/or OTE LP in the role of Vice-President at OTE Logistics, and is Glenn Page’s brother; and
- (d) Kellie Hodgins, a.k.a. Kelly Hodgen or Kellie Hodgen (“**Hodgins**”) who was employed by OTE LP and OTE Logistics as director of finance.

73. Certain of the other defendants listed in the Page claim include corporations controlled by Page, Cox, or Brian Page, variously.

74. As detailed in the Page Claim, the plaintiffs allege, among other things, that the defendants misappropriated millions of dollars of the OTE Group’s funds. The Page Claim includes the following allegations, among others:

- (a) In 2021, Page and Cox purchased, through a corporate entity, a seventy foot yacht from the Italian shipbuilder Azimut Benetti, named "Cuz We Can" (the “**Italian Yacht**”), using funds wire transferred from OTE LP’s account, and caused OTE Logistics LP to guarantee a chattel mortgage secured by the vessel. A copy of the allegedly fraudulent full liability guarantee executed by Brian Page on July 21, 2021, who inappropriately represented himself as “director” of Gen 7 Fuel Management Services LP on both signing

blocks, guarantees the chattel mortgage secured by the Italian Yacht, is attached hereto at **Exhibit "T"**, along with a transcript of registry under official number 844825 which provides confirmation of the chattel mortgage registered on July 27, 2021;

- (b) Brian Page posed as a director and officer of OTE LP and OTE Logistics to facilitate concealed dealings with third parties;
- (c) Glenn Page and Brian Page provided a fraudulent directors' resolution of OTE Logistics authorizing its guarantee of debts in respect of the purchase of the Italian Yacht. A copy of this allegedly fraudulent directors' resolution is attached at the prior Exhibit;
- (d) Unauthorized loans were issued for the construction of Gen 7 Stations, which were controlled and managed by Page and Cox;
- (e) The OTE Group was financially harmed when appropriate fuel tax was not charged, for which the OTE Group may now face regulatory and taxation liability;
- (f) Glenn Page used OTE LP funds and credit for other construction, in an amount exceeding \$15,000,000; and
- (g) OTE LP's funds and credit has been used to establish and operate certain other entities owned by Glenn Page and related parties.

75. As a result of the above alleged misconduct, no accounting or proper financial information has ever been received concerning these transactions, operations, ownership structure and business affairs. Furthermore, to the best of my knowledge, the OTE Group has never received any payment, distribution of profit, or return of misappropriated funds from any of the defendants.

76. The OTE Group intends to continue to aggressively pursue the existing and ongoing litigation against all defendants named in the Page Claim, including recommencement of the claim in the other jurisdiction, which also has pre-trial asset garnishment procedures. Certain of these defendants may be liable for millions of dollars in missing tax collected but not presently remitted to both the MOF and CRA.

***G. Communications with the MOF and the Zurich Bond Issues***

77. As of November 1, 2022, OTE LP was in default of its July, August and September 2022 fuel and gas filings and owed the following amounts to MOF (inclusive of penalty and interest):

- (a) Gas Licenses: \$27,856,055.71; and
- (b) Fuel Licenses: \$6,885,045.70.

78. The OTE Group and the Proposed Monitor continue to work together to understand what unfolded to lead to the potential license expiry issue with the MOF. The MOF has also provided the OTE Group with a summary of interactions between the MOF and OTE LP through Glenn Page from December 1, 2021 to July 29, 2022, a copy of which is attached hereto at **Exhibit “U”**.

79. Per correspondence dated November 1, 2022 from the MOF to the Applicants (attached hereto at **Exhibit “V”**), the MOF advised OTE LP that it was prepared to issue time-limited permits to December 31, 2022, as seen in the above Exhibits, upon fulfilment of certain conditional requirements, including, *inter alia*:

- (a) Weekly status meetings with the ministry to provide updates on OTE’s finances;
- (b) Filing of certain outstanding fuel and gas returns;
- (c) Making certain weekly payments; and
- (d) Providing current financial statements and a formal payment plan arrangement.

80. As at the date of this affidavit, OTE LP has since filed and remitted gas and fuel taxes for the months of October to December of 2022. Returns for July, August and September of 2022 were filed without payment, with the acknowledgement (but not waiver) of the MOF. OTE LP has begun paying taxes for October of 2022, and December of 2022 taxes have also been paid to date. Further details on this are outlined in the pre-filing report of KPMG.

81. On or about December 6, 2022, the OTE Group received a security cancellation notice from the MOF advising that, on December 2, 2022, the MOF had received a 60 day cancellation notice (the **“Security Cancellation Notice”**) from Zurich Insurance Company Ltd. (**“Zurich”**) in respect of Surety Bond No. 6350832 worth \$2,000,000 (the **“Zurich Bond”**). Zurich had originally issued the Zurich Bond to serve as security for the amounts owing to the MOF in connection with the Gas Licenses and Fuel Licenses. The Security Cancellation Notice stated that replacement security must be put in place by January 30, 2023 (the **“Security Deadline”**). A copy of both the Security Cancellation Notice and the Zurich Bond are attached hereto to this Affidavit at **Exhibit “W”**.

82. After various discussions, on or about December 22, 2022, the MOF informed the relevant Applicants that conditional time-limited permits would be granted for the Gas Licenses and the Fuel Licenses until January 31, 2023. A copy of this correspondence from the MOF is attached hereto at **Exhibit “X”**.

83. Despite the Security Cancellation Notice, the Applicants continued to work extensively to ensure that the Zurich Bond would be reinstated. On or about January 24, 2023, Zurich confirmed via email to the Applicants that a standard reinstatement notice would be provided to the MOF to satisfy the Security Deadline. The Applicants provided this confirmation to the MOF on the same day, and a copy of Zurich’s email confirming the reinstatement of the Zurich Bond along with confirmation to the MOF is attached hereto at **Exhibit “Y”**.

84. Despite these meetings, and despite providing the MOF with a copy of the reinstated email confirmation from Zurich, later on the same day of January 24, 2023, the MOF called on and redeemed the Zurich Bond and provided the Applicants with confirmation via email for the amount of \$2,000,000 (the **“Redemption Email”**). A copy of this Redemption Email is attached hereto at **Exhibit “Z”**.

85. The MOF has since advised the Proposed Monitor and the Applicants via email correspondence on January 26, 2023, that the Gas Licenses and the Fuel Licenses could be potentially extended to March 31, 2023, with the discretion of the MOF to suspend or cancel the Gas Licenses at any time, pending the below:

- (a) The Applicants’ intention to provide security of \$2,000,000 to the MOF as cash security, in the following installments:
  - (i) The first installment of \$500,000 delivered no later than the latter of January 30, 2023 or a rescheduled date obtaining Court approval of the CCAA application of the Applicants, with that date to be no later than the week of January 30 to February 3<sup>rd</sup>, 2023; and
  - (ii) The second installment of \$1,500,000 delivered no later than February 21, 2023 upon obtaining Court approval of the extension of the CCAA application of the Applicants; and
- (b) The above security is not to be redeemed for any tax owing by the relevant Applicants for periods prior to the date of providing the security;

86. Details on the above plan continue to be negotiated with the MOF. In light of the urgency of requiring the Gas Licenses and the Fuel Licenses, and the reality that the MOF retains a discretionary power to revoke the Gas Licences and the Fuel Licences, the Applicants are seeking certain relief in the Initial Order to stay the revocation of the Gas Licenses and the Fuel Licenses during these CCAA proceedings. I have been advised by my counsel and understand that, pursuant to the *Fuel Tax Act* and the *Gasoline Tax Act*, without the Gas Licenses and the Fuel Licenses, the OTE Group will no longer be able to, *inter alia*:

- (a) bring or cause to be brought into Ontario gasoline in bulk, aviation fuel in bulk or propane in bulk;
- (b) act as an interjurisdictional transporter;
- (c) bring or cause fuel in bulk to be brought into Ontario; and
- (d) take or cause to be taken fuel in bulk out of Ontario.

87. I have further been advised by my counsel and understand that OTE Group may incur significant penalty fines and may be found guilty of offences under both statutes cited above, should it continue to operate without the extension of the Gas Licenses and the Fuel Licenses. I believe that, absent the Stay of Proceedings (defined below), the MOF could discretionarily terminate the Gas Licenses and the Fuel Licenses, or alternately impose other conditions for renewal, which may result in the OTE Group losing its ability to conduct business with its customers in Ontario. Without the Gas Licenses and the Fuel Licenses, the Applicants are likely to lose their vital revenue streams.

88. A revocation of the Gas Licenses and Fuel Licenses would functionally halt the OTE Group's entire business operation, and would pose a significant impediment to its restructuring. As a result, as part of the draft Initial Order, the OTE Group is seeking to stay the MOF from, among other things, terminating the Gas Licenses and the Fuel Licenses such that both the Gas Licenses and the Fuel Licenses remain in force during the CCAA proceedings, subject to the ongoing fulfillment of filing and payment obligations arising after the date of the Initial Order, should this Court grant the order sought.

#### **IV. FINANCIAL POSITION**

89. The viability of the Applicants' business operations is highly dependent on fuel and gasoline blending and commodity pricing. By the end of 2022, OTE GP had an average daily fuel sales volume of

2 million litres. However, despite these significant sales, I noticed potential irregularities in the financial reporting of OTE LP and OTE Logistics LP from in or about late 2019.

90. OTE GP's fiscal year end is December 31. The OTE Group's unaudited financial statements were prepared as at and for the years ending December 31, 2019 and December 31, 2020 for both OTE GP and OTE LP. Attached hereto and marked collectively as **Exhibit "AA"** are OTE Group's Unaudited Consolidated Financial Statements and Management's Discussion and Analysis for the fiscal year ended 2020 and 2019 (the "**2019-2020 YE Financial Statements**").

91. Despite the above, I verily believe that the 2019-2020 YE Financial Statements, which represent both OTE GP and OTE LP's financial status in 2019 and 2020, are likely misleading and incorrect. Due to the purported misconduct and self-dealing of certain employees and C-Suite executives of the OTE Group, as alleged in the Page Claim:

- (a) Company funds may have been pilfered and used both directly and indirectly to pay for inappropriate expenses for certain of the defendants, including personal luxury travel and property, including the Italian Yacht;
- (b) Certain financial statements for OTE LP may have been forged, and OTE GP, OTE LP and OTE Logistics have not prepared financial statements since December 31, 2020 as a result of certain of the defendants' actions;
- (c) Certain other retail gas station businesses located on First Nation Reserves in Ontario (collectively, the "**Gen7 Stations**") controlled by certain of the defendants had been given preferred pricing for fuel and gasoline at the expense of the OTE Group, with certain of the Gen7 Station owners not being aware that the pricing was at a loss to the OTE Group, and with the financing of these Gen7 stations also in question, as noted above; and
- (d) The outstanding accounts receivable from Gen7 Stations to OTE Group remain unpaid. The OTE Group continues to work with the Proposed Monitor to determine the amount of these liabilities.

92. Other than the 2019-2020 YE unaudited Financial Statements, the OTE Group has had no further access to books and records to analyze financial data due to the alleged misconduct claims detailed in the Page Claim (as defined below). In part, the OTE Group's need for the protection of these CCAA proceedings is, in part, prompted by the need for additional time to understand the OTE Group's assets,

liabilities and other financial information with more clarity and to reconstruct the missing books and records, to the extent possible, as detailed below. As of this date, I understand that the OTE Group has limited access to financial records for OTE LP, and no access to any financial records for OTE Logistics.

93. In reality, the OTE Group likely has significant liabilities with functionally no books and records, and I anticipate that a number of creditors will shortly demand payment, sue or threaten to sue the Applicants. As stated above, allegations of misconduct against Glenn Page, former president of OTE GP, which are detailed further below, have, in part, precipitated the OTE Group's need for protection under the CCAA.

94. In light of the limited information available about the financial status of the OTE Group, on or about October 4, 2022, KPMG was retained by OTE GP to act as financial advisor for the purposes of advising on a potential restructuring. As further described herein, KPMG has assisted the OTE Group in certain restructuring and cost-reducing steps prior to entering this CCAA proceeding.

95. KPMG has also been working with OTE to understand the company's estimated assets and liabilities. Based on the available information, it appears the OTE is balance sheet insolvent. A summary of this analysis, as is further reflected by KPMG in its pre-filing report, is provided below.

***A. Liabilities***

96. Assets and liabilities of the OTE Group, as estimated by the Proposed Monitor, are as follows:



<b>Original Traders Energy</b>	
<b>Estimated assets and liabilities</b>	
<b>In C\$; unaudited</b>	<b>Total</b>
<b>Assets</b>	
Cash	9,000,000
Accounts receivables	13,935,581
U.S. excise duty refunds	34,588,346
Fixed assets and equipment	10,000,000
<b>Total Assets</b>	<b>67,523,927</b>
<b>Liabilities</b>	
Royal Bank of Canada	4,499,428
Accounts payable	12,665,510
Ministry of Finance obligations	38,050,958
Canada Revenue Agency obligations	<b>TBD</b>
Canada Border Services Agency obligations	19,376,773
Export Development Canada claim	1,000,000
Potential litigation claims	15,800,000
<b>Total Liabilities</b>	<b>91,392,669</b>

i. PPSA Registrations

97. Attached hereto and marked as **Exhibit “BB”** are true copies of the Personal Property Registry search results for each of the Applicants for Ontario (collectively the “**PPSA Searches**”), including search results against prior names of the Applicants, where applicable.

98. Attached hereto and marked as **Exhibit “CC”** is a summary of the PPSA Searches for each of the Applicants, including all prior names of each Applicant, where applicable.

99. The OTE Group’s secured debt relates primarily to, *inter alia*: (a) liability to the Royal Bank of Canada (“**RBC**”); and (b) liability to secured lessors for various equipment leases. The following parties hold registrations under the *Personal Property Security Act* (“**PPSA**”) against the OTE Group, in no particular order:

(a) **OTE GP: RBC;**

(b) **OTE LP: RBC;**

- (c) **249:** Transcourt Inc.; Essex Lease Financial Corporation; VFS Canada Inc.; RBC; OTE LP; OTE GP; and
- (d) **OTE Logistics:** Essex Lease Financial Corporation; CWB National Leasing Inc.; RBC; OTE LP; and OTE GP.

100. Transcourt Inc., VFS Canada Inc. and Meridian Onecap Credit Corp. also hold PPSA registrations against the prior name of OTE Logistics.

**a. Royal Bank of Canada**

101. OTE LP, as borrower, entered into the following loan agreement dated April 27, 2021, as amended on July 6, 2021, and on September 22, 2021, and as further amended on February 2, 2022 (the “**RBC Loan Agreement**”, as may be further amended, modified or restated) with RBC, as lender, for:

- (a) a \$3,000,000 revolving demand facility, consisting of: (i) RBP based loans with interest rates of RBP + 1.5% revolving in increments of \$5,000.00; (ii) RBUSBR based loans in US currency with interest rates of RBUSBR + 1.50% revolving in increments of \$5,000.00 USD; and (iii) letters of guarantee in CAD or USD;
- (b) a \$1,375,000 revolving demand facility by way of letters of guarantee in CAD or USD; and
- (c) a \$5,000,000.00 revolving lease line of credit by way of certain leases; and
- (d) certain other facilities, including a credit card to a maximum amount of \$30,000 and certain foreign exchange forward contracts.

102. Gen7 Fuel Management Services LP, a prior name of OTE Logistics, entered into the following loan agreement dated September 22, 2021 (the “**Second RBC Loan Agreement**” and with the RBC Loan Agreement, the “**RBC Loan Agreements**”, as may be further amended, modified or restated) with RBC as lender, for:

- (a) A \$200,000.00 revolving demand facility, consisting of RBP-based loans revolving in increments of \$5,000.00 at an interest rate of RBP + 1.5%;
- (b) A \$2,000,000.00 revolving lease line of credit by way of leases (the “**Leases**”); and

- (c) A credit card facility to the maximum amount of \$50,000.00.
103. All of the above facilities across all the RBC Loan Agreements are repayable on demand.
104. A copy of the RBC Loan Agreements are attached hereto at **Exhibit “DD”**.
105. As security for the RBC Loan Agreement, the following documents were executed (the “**RBC Security**”):
- (a) General Security Agreement dated August 4, 2021 by Gen7 Fuel Management Services LP (a prior name of OTE Logistics LP) in favour of RBC;
  - (b) General Security Agreement dated April 18, 2018 by OTE LP in favour of RBC;
  - (c) Assignment of Insurance dated October 15, 2021 by OTE LP in favour of RBC;
  - (d) Guarantee in the amount of \$1,500,000 dated August 4, 2021 by OTE LP regarding the obligations of Gen7;
  - (e) Guarantee in the amount of \$3,750,000 dated October 4, 2021 by OTE LP regarding the obligations of Gen7;
  - (f) Guarantee in the amount of \$9,505,000 dated October 4, 2021 by Gen7 regarding the obligations of OTE LP;
  - (g) Landlord Waiver and Consent dated October 17, 2021 regarding the property known municipally as 180 Industrial Park Drive., Shannonville, Ontario K0K 3A0;
  - (h) Master Lease Agreement dated October 7, 2021 between RBC, as lessor, and Original Traders Energy LP, as lessee, as amended by various amending agreements; and
  - (i) Master Lease Agreement dated October 26, 2021 between RBC, as lessor, and Gen7 Fuel Management Services LP (a prior name of OTE Logistics LP), as lessee, as amended by various amending agreements.
106. Attached hereto and marked as **Exhibit “EE”** are copies of the RBC Security.
107. In addition, an account performance security guarantee certificate was executed by the Export Development Canada (“**EDC**”) to RBC on May 6, 2022 in the maximum aggregate liability amount of

\$2,000,000 USD for OTE LP as customer and with OTE USA as affiliate for the period of May 6, 2022 to May 31, 2023 (the “**EDC Performance Guarantee**”). A copy of the EDC Performance Guarantee is attached hereto and marked as **Exhibit “FF”**.

108. As stated in the EDC Performance Guarantee, OTE USA is indicated to be a wholly-owned subsidiary of OTE LP. OTE USA eventually became a beneficiary of the RBC Loan Agreement. The OTE USA Facility is in the amount of \$1,000,000 offered by way of letter of credit by RBC to OTE LP under Standby Letter of Credit No. SLC2527026T, a copy of which is attached hereto at **Exhibit “GG”**, which became subject to the EDC Performance Guarantee. The purpose of the OTE USA Facility was to secure the purchase of petroleum and to support an LC provided to Marathon Petroleum Company (“**Marathon**”). The OTE USA Facility provides security to Marathon who provided petroleum to certain of the OTE Group for fuel blending operations.

109. Glenn Page on behalf of OTE USA provided RBC with documents regarding the beneficial owners of both OTE USA and OT Energy Inc., a Michigan corporation (the “**Beneficial Ownership Certification Documents**”). Copies of the Beneficial Ownership Certification Documents are attached hereto at **Exhibit “HH”**.

110. On or about November 3, 2022, demand was made under the OTE USA Facility by Marathon for \$1,000,000 USD. A copy of this demand is attached hereto at **Exhibit “II”**. Furthermore, I understand that on or about November 7, 2022, EDC received a claim application from RBC under the EDC Performance Guarantee due to the call on the LC by Marathon. A copy of correspondence from EDC referencing this EDC claim is attached hereto and marked as **Exhibit “JJ”**.

111. On or about November 8, 2022, counsel for both OTE LP and OTE Logistics wrote to Marathon, *inter alia*, to advise Marathon that Glenn Page, Brian Page, Cox and Hodgins had no authority effective July 18, 2022 to act on behalf of OTE LP or OTE Logistics, and that, as cited in the Page Claim, “the defendants obtained such letter of credit under false pretenses”. A copy of this letter is attached hereto and marked as **Exhibit “KK”**.

112. Counsel for the OTE Group have been in communication with counsel for RBC in anticipation of this CCAA proceeding. I understand from my counsel’s communications with RBC that as of January 19, 2023, the following indebtedness is owed to RBC under the RBC Loan Agreements (collectively, the “**RBC Indebtedness**”), for a total amount of \$4,558,280.88 in principal and interest (broken down below), exclusive of amounts which are or are to become owing for RBC’s uncapitalized fees, costs, professional and legal fees which accrue interest at the rates set out in the RBC Loan Agreements:

- (a) Original Traders Energy LP – Revolving Lease Facility - \$3,453,323.10;
- (b) Original Traders Energy LP – Visa Facility - \$22,570.68;
- (c) OTE Logistics LP – Revolving Lease Facility - \$1,046,105.10; and
- (d) OTE Logistics LP – Visa Facility - \$36,282.00.

113. On or about January 26, 2023, OTE LP and OTE Logistics entered into a forbearance agreement with RBC (the “**RBC Forbearance Agreement**”). Under the RBC Forbearance Agreement, both OTE LP and OTE Logistics have covenanted with RBC that, in exchange for RBC forbearing their rights under the Security during the CCAA proceedings (or the occurrence of an Intervening Event, as defined within the RBC Forbearance Agreement):

- (a) RBC shall enjoy the benefit of their Security during the relevant borrowers’ anticipated CCAA proceedings such that no charge shall be granted in priority to the Security within the Initial Order or during the pendency of these CCAA proceedings, without the written consent of RBC;
- (b) the Stay Period contemplated by the Initial Order or during the pendency of the CCAA proceedings shall not apply RBC; and
- (c) RBC shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicants under the CCAA.

114. I anticipate that without the relief granted pursuant to the draft Initial Order, RBC is likely to demand on the RBC Loan Agreement, due to the outstanding amounts owing under the RBC Loans.

## ii. Lease Obligations

### *Personal Property Leases*

115. As seen in the summary of the Applicants’ PPSA registrations at Exhibit CC, due to the need for petroleum supply equipment in the Fuel Industry, the Applicants are subject to a significant number of personal property leases (the “**Equipment Leases**”) which are the subject of vehicle registrations (the “**Vehicle Registrations**”). A copy of a chart summarizing the Vehicle Registrations is also attached hereto at **Exhibit “LL”**.

116. Copies of the majority of the key Equipment Leases are also attached hereto at **Exhibit “MM”**. Many of the Equipment Leases are subject to acceleration terms upon failed payment, which may trigger events of default.

117. As of the date of this Affidavit, none of the Equipment Leases are in default. However, I anticipate that without the protection of the draft Order and these anticipated CCAA proceedings, many of these Equipment Leases could become subject to acceleration due to defaults, which could trigger millions of dollars in liability to the relevant Applicants.

iii. Unsecured Liabilities

**a. Suppliers**

*Suppliers*

118. The OTE Group transacts with various suppliers to purchase gas and fuel (the “**Commodity Suppliers**”). The OTE Group traditionally purchases from large suppliers in the United States based on forecasted consumption figures. These commodity and volume forecasts are developed using historical data and current market conditions.

119. The OTE Group’s present portfolio and forecasts are tested internally against multiple scenarios to estimate a range of revenue and supply outcomes. Scenarios are constructed using historical consumption, weather, load and price patterns for known and expected market changes.

120. The agreements that govern the relationships between the Commodity Suppliers and the OTE Group are critical to the delivery of gas and fuel to the OTE Group’s customers. Absent these agreements, the OTE Group would be unable to supply gas and fuel to the First Nations locations that it services. As discussed below and in the pre-filing report of the Proposed Monitor, the draft Initial Order sought by the Applicants seeks to authorize payment to certain of these Commodity Suppliers if, with the consent of the Monitor and the OTE Group, the Commodity Supplier is critical to the business and operations of the relevant Applicant.

**b. Notes Receivable**

121. According to the Financial Statements, as of the current date, there were notes receivables from the following entities or persons: J. Maracle, Walpole, Gen7 Hiawatha, Gen7 Quebec Expansion, Gen7 Melbourne, and Gen7 Tyendinaga. I am currently working with the Proposed Monitor to investigate the

contents of, copies of and details surrounding these promissory notes receivables (the “**Notes Receivables Agreements**”).

**c. Notes Payables**

122. According to the Financial Statements, as of the current date, there were notes payables from the following entities or persons: Miles Hill, myself, 2584861 Ontario Inc. and 2658658 Ontario Inc. I am currently working with the Proposed Monitor to investigate the contents of, copies of and details surrounding these promissory notes payable (the “**Notes Payable Agreements**”).

**iv. CRA Liabilities**

123. OTE LP is currently subject to an ongoing audit by CRA. In addition to anticipating correspondence from CRA relating to the results of the audit, the Proposed Monitor continues to review the Applicants’ books and records (such as they exist) to assess outstanding liabilities to CRA, including for excise tax, carbon tax, customs duties, GST/HST, and/or source deductions, in addition to assessing whether refunds may be payable for certain of these categories

124. The relief sought within the Initial Order will enable the Applicants to have the assistance of the Proposed Monitor to determine these amounts.

**vii. Additional Litigation**

125. Beyond the Page Claim, the OTE Group has other outstanding litigation matters by which it is presently impacted, which are summarized below.

**a. Fuel Supply Agreement Issues**

126. The Page Claim details specific issues regarding alleged breaches of contract that have negatively impacted the business dealings of the OTE Group. Capitalized terms used within this section but undefined are as used within the Page Claim.

127. As discussed above and herein, as a fuel blender and distributor, OTE LP sourced bulk fuel from different suppliers, including suppliers from the United States. OTE LP would then have the bulk fuel transported from the United States to locations in Canada before processing and delivering to customers. OTE LP relies on several shipping companies and logistics providers to transport the bulk fuel from the United States to Canada. One such logistics company is Consolidated Logistics Inc. (“**CLI**”).

128. In respect of some, but not all of the fuel imported from the United States, OTE LP operated through OTE USA, at the behest of Glenn Page. As discussed above, OTE USA is not an applicant in these CCAA proceedings, but is a defendant to the Page Claim.

129. There are significant allegations and damages claimed against OTE USA in the Page Claim, which include, *inter alia*:

- (a) OTE USA is not in fact a wholly-owned subsidiary of OTE LP;
- (b) OTE USA had been purchasing and reselling bulk fuel to OTE LP at a profit, and had been charging OTE LP U.S. excise taxes, despite its exempt status, as generally speaking, undyed diesel and gasoline purchased in the United States and exported to Canada is eligible for a refund of excise taxes. I am aware that refunds were claimed for both United States federal and State of Michigan taxes paid on diesel and gasoline exported to Canada. I understand, pursuant to the Page Claim allegations, that OTE USA did not give OTE LP the benefit of these appropriate exemptions for taxes; and
- (c) OTE LP's funds and credit were used to establish, among other corporate entities, OTE USA inappropriately.

130. OTE USA purchased fuel from a U.S. supplier and arranged for its delivery to Canada through OTE LP's shipping and logistics providers. However, as alleged in the Page Claim, Glenn Page secretly caused OTE LP and OTE USA to enter into a fuel supply agreement dated May 1, 2022, that governed this arrangement on terms he directed (the "**Fuel Supply Agreement**"). A copy of the Fuel Supply Agreement is attached hereto to this Affidavit at **Exhibit "NN"**.

131. To the best of my knowledge, OTE LP and OTE USA operated in accordance with the terms of that Fuel Supply Agreement, despite the fact that the operations of both companies were facilitated in a manner contrary to the parties' agreements and reasonable expectations.

132. However, as noted in the Page Claim, in July and August of 2022, OTE LP directly purchased fuel volumes sufficient to fill 12 rail tank cars, and nominated and paid for fuel volumes sufficient to fill 27 rail tank cars from Marathon through OTE USA (the "**Undelivered Cars and Fuel**").

133. The Undelivered Cars and Fuel were transported from Ohio and Michigan to CLI's rail yard located in Sudbury, Ontario. CLI and OTE had previously entered into an operating agreement dated



December 15, 2021 (the “**CLI Operating Agreement**”), a copy of which is attached to this Affidavit at **Exhibit “OO”**.

134. As of September 15, 2022, each of the 39 Undelivered Cars and Fuel had crossed the US border and arrived at the Sudbury rail yard. A list of the 39 rail cars at issue is attached hereto at **Exhibit “PP”**.

135. On or about September 25, 2022, via email, CLI also informally demanded payment of outstanding invoices (INV011628 and INV011767) owing as of the end of August, 2022 for the total balance of \$523,796.96 by OTE LP. A copy of this email along with the two invoices is attached hereto at **Exhibit “QQ”**.

136. While the Undelivered Cars and Fuel were eventually released to the OTE Group, on or about January 19, 2023, OTE USA filed an American complaint against OTE LP in the United States District Court Eastern District of Michigan under Case no. 2:23-cv-10152-GCS-DRG (the “**US Claim**”) regarding the payment of fuel under, *inter alia*, the Fuel Supply Agreement. A copy of the US Claim is attached hereto to this Affidavit at **Exhibit “RR”**. OTE LP intends to defend itself against this complaint after restructuring.

137. The Applicants also are aware of other ongoing disputes with suppliers over the alleged actions of OTE USA, and anticipates that additional litigation may arise in the future on these matters.

#### **b. Claybar Claim**

138. Claybar Contracting Inc. (“**Claybar**”) is a fuel station construction company which has constructed certain retail gas stations located on First Nation Reserves in Ontario. As alleged in the Page Claim, Claybar’s accounts were “secretly arranged to have [been] paid by OTE LP” (para 72).

139. Due to alleged outstanding construction fees, on or about November 4, 2022, Claybar initiated a Statement of Claim against OTE LP and certain other defendants (the “**Claybar Claim**”) under Court File No. CV-22-00080049-0000. A copy of the Claybar Claim is attached hereto at **Exhibit “SS”**. The Claybar Claim also includes allegations relating to the Couchiching Blending Location and issues with its construction.

**c. McDougall Claim**

140. On or about September 20, 2022, McDougall Energy Inc. (“**McDougall**”) filed a Statement of Claim against OTE GP, OTE LP and certain other defendants (the “**McDougall Claim**”) under Court File No. CV-22-00029009-000. A copy of the McDougall Claim is attached hereto at **Exhibit “TT”**.

141. As stated in the McDougall Claim, at a date unknown to McDougall, OTE GP and OTE LP entered into an agreement to supply petroleum products to certain of the defendants allegedly in violation of another exclusive supply agreement between the Plaintiff and certain of the defendants.

**d. Employee Claims**

142. The OTE Group has received a claim from a former employee, relating to employment issues, and anticipates that further issues from other employees may arise in the short term. While the latter claim has been settled, payment has not yet been made due to the OTE Group’s proposed potential restructuring. A copy of this claim is attached hereto at **Exhibit “UU”**.

143. Post-restructuring, the OTE Group intends to defend against the above existing litigation, other than the employee claim. The OTE Group seeks an order staying all claims against the OTE Group during the CCAA proceedings in order to stabilize the business and to avoid the immediate need for management to deal with these disputes while it attempts to gain control and stability within its business and focus on the possibility of a restructuring.

***B. Cash Flow Forecast***

144. Attached hereto and marked as **Exhibit “VV”** is a projected 13-week cash flow forecast (the “**Cash Flow Forecast**”) of OTE Group. The Cash Flow Forecast was prepared by the Proposed Monitor.

***C. Assets***

145. The following paragraphs of this Affidavit describe the known assets of the OTE Group. The Proposed Monitor continues to work with the OTE Group to better understand the assets moving forward, given the limited state of the books and records of the OTE Group collectively.

**i. Excise Duty Refunds**

146. OTE holds a net remittance liability to remit for both Canadian federal and provincial excise gasoline and fuel taxes. OTE has claimed, or is in the process of claiming (or alternately is anticipating

receiving) tax refunds from US taxing authorities in respect of American federal and State of Michigan fuel and excise taxes paid on fuels exported from the State of Michigan to Canada.

147. A copy of a letter detailing a listing of the various excise taxes, including filings already prepared, filings anticipated to be prepared, and refunds received and anticipated to be received, is included hereto at **Exhibit “WW”**. The letter is from UHY Advisors MI, Inc. dated December 16, 2022.

#### ii. Customer Collections

148. As reflected in the Cash Flow Forecast, the OTE Group also continues to expect to receive ongoing payments from its customers, as it continues to operate through the proposed restructuring period.

### **VI. CHALLENGES AND LIQUIDITY ISSUES FACED BY THE APPLICANTS**

#### ***A. Strategic Initiatives***

149. As a result of the difficulties it has faced, OTE Group, in consultation with KPMG, pursued a number of strategic initiatives after the course of KPMG’s retainer. To accomplish these initiatives, KPMG, *inter alia*, assisted the OTE Group by:

- (a) Stabilizing the financial function at the Applicants (i.e., financial reporting, forecasting, liquidity management);
- (b) Getting access to and updating the accounting records and related systems (i.e., human resources);
- (c) Working to ensure appropriate controls and processing are in place for more accurate and timely reporting;
- (d) Correcting invoicing processes that have, in the past, incorrectly allowed for the invoicing of lower than prescribed tax rates related to fuel sales;
- (e) Reviewing and assessing product costing; and
- (f) Revising operational structure and related costs.

150. Despite these pricing changes and efforts to improve cash flow, the OTE Group still faces a balance sheet insolvency due to their excess liabilities from which they require creditor protection.

## VII. CCAA PROCEEDINGS AND RELIEF SOUGHT

### A. Need for CCAA Proceeding

151. As indicated in the Cash Flow Forecast, the Applicants, with the assistance of their legal and financial advisors, have continued their efforts to maintain their liquidity position and to review strategic options to address their financial obligations. The Applicants have instituted measures, as detailed above, to address their constrained cash flow in the past several months.

152. However, without the benefit of a stay of proceedings, the OTE Group will not be able to respond to and address all of the above noted stakeholder issues, including, *inter alia*, enforcement by tax authorities, litigation and anticipated secured and unsecured creditor enforcement proceedings. The Applicants urgently require the protection afforded by the CCAA. The Applicants are unable to make full payment of financial obligations as they come due, including amounts owing to trade creditors, and anticipate significant shortfalls in their ability to pay liabilities owed to the MOF and CRA.

153. The Applicants' business has significant value and plays an important role among the First Nation communities of Southern Ontario. The best method of realization for creditors is through a CCAA process, so that the OTE Group can explore potential restructuring options.

154. In consultation with their advisors, including KPMG, the Applicants have determined that the CCAA process provides the most beneficial regime to preserve the ongoing operation and the Applicants' employment base and maximize value for the OTE Group stakeholders. The main goals of the CCAA process are as follows:

- (a) To stabilize OTE Group's business;
- (b) To provide a forum to understand the quantum of liabilities and claims of the Applicants;  
and
- (c) To provide the OTE Group, along with the assistance of KPMG, with the necessary time to explore a plan of compromise or arrangement or other monetization options under the CCAA (a "**Plan**").

155. Without the protection provided by the CCAA, the OTE Group cannot protect its business and assets or consider strategic options and alternatives to effect a restructuring and ensure ongoing operations for the benefit of its stakeholders. The Applicants seek the protection of the CCAA to maintain stability

for their business and to provide breathing room to consider strategic options that may be available to restructure the OTE Group's business. Each relevant Applicants' director has resolved to authorize the within CCAA proceeding.

156. The Applicants are balance sheet insolvent and unable to meet their obligations as they generally become due.

***B. Appointment of Monitor***

157. The Applicants seek the appointment of KPMG as Monitor of the Applicants in these CCAA proceedings.

158. KPMG is familiar with the operations of the Applicants, as KPMG was previously engaged as a financial advisor to assess the Applicants' strategic alternatives and restructuring initiatives. KPMG has reviewed and assisted in the preparation of the Cash Flow Forecast, and has provided guidance and assistance in the commencement of these CCAA Proceedings. As a result, KPMG has developed critical knowledge about the Applicants, their business operations, financial challenges, strategic initiatives and restructuring efforts to date.

159. KPMG has not acted as the Applicants' auditor and is a licensed insolvency trustee.

160. The additional investigative powers sought for KPMG as Monitor will permit the most efficient identification and realization of the Applicants' assets, including all claims against Glenn Page and those working with him in connection with funds to have been collected and remitted as taxes.

161. KPMG has consented to act as the Monitor, subject to Court approval. A copy of the Consent to Act as Monitor provided by KPMG is attached hereto and marked as **Exhibit "XX"**.

***C. No DIP Loan***

162. As per the Cash Flow Forecast, the OTE Group will not be seeking a debtor-in-possession loan at this stage to fund the proposed CCAA proceedings, and will instead be relying on its existing cash position and its anticipated cash flow.

163. As a result, the Applicants are not seeking the approval of a debtor-in-possession term sheet or charge within the draft Initial Order.

#### *D. Stay of Proceedings*

164. Given the challenges faced by the Applicants described herein, OTE Group requires a stay of proceedings to maintain the *status quo* and to give the Applicants the breathing space they require to advance a restructuring.

165. The proposed Initial Order contemplates a stay of proceedings for a period of 10 days (the “**Stay of Proceedings**”), which I understand is the maximum that can be authorized by a court at the initial application stage under the CCAA.

#### *Regulatory Stay of Proceedings*

166. In addition, the Applicants are seeking to have the Stay of Proceedings apply to regulatory bodies (the “**Regulatory Stay of Proceedings**”).

167. In order for the Applicants to continue functioning as a going concern business, they must maintain their Fuel Licenses and Gas Licenses. The MOF has currently agreed to extend the Fuel Licenses and Gas Licenses to March 31, 2023. However, the MOF retains the right to cancel the Fuel Licences and Gas Licences at any time. Without the Fuel Licences and Gas Licences, the OTE Group cannot operate and these CCAA proceedings would be rendered pointless.

168. The Applicants are of the view that the proposed Regulatory Stay of Proceedings is reasonably necessary at this time.

#### *E. Administration Charge*

169. It is contemplated that a Court-ordered charge over the Applicants’ Property (as defined in the Initial Order) would be granted in favour of the Monitor, counsel to the Monitor and counsel to the Applicants (the “**Administration Professionals**”), to secure payment of their professional fees and disbursements, whether incurred before or after the date of the Initial Order (the “**Administration Charge**”). In accordance with the RBC Forbearance Agreement, the Administration Charge will be subordinate to the RBC Security.

170. The proposed Administration Charge being sought is for a maximum amount of \$500,000.

171. In preparing the Cash Flow Forecast, the Applicants, in consultation with the Monitor, considered the professional fees forecasted to be incurred on a weekly basis during the cash flow period. Until the week of the Comeback Hearing (Week 2), the Applicants forecast to incur significant professional fees in

connection with the CCAA proceedings, such as preparing for the Comeback Hearing, communicating with employees and stakeholders following the initial filing, and complying with statutory notices, mailings and communications.

172. Accordingly, I believe the quantum of the Administration Charge sought is reasonably necessary at this time to secure the professional fees of the Administration Professionals.

173. All of Administration Professionals have contributed, and will continue to contribute, to the Applicants' restructuring efforts.

174. The Applicants, in consultation with the Monitor, and their respective advisors, will consider whether an increase to the Administration Charge will be required at the Comeback Hearing.

#### ***F. Directors' Charge***

175. It is contemplated that the Applicants' directors and officers would be granted a priority Court-ordered Directors' Charge on the Applicants' property in priority to all other charges other than the Administration Charge and the RBC Security, up to a maximum amount of \$250,000.

176. The Directors' Charge is intended to address potential claims that may be brought against directors and officers.

177. Details on policy protection over the directors and officers of the OTE Group is further detailed in the pre-filing report of the Proposed Monitor.

178. The Directors' Charge is crucial to the continued involvement of the officers and directors during the CCAA proceeding to provide them with certainty regarding their personal liability.

179. The officers and directors have skills, knowledge and expertise as well as established relationships with various stakeholders that are critical to a successful restructuring.

180. The quantum of the Directors' Charge was developed with the assistance and support of KPMG.

181. The Applicants' ordinary course operations give rise to potential director liability, including payroll and sales tax. The Applicants are of the view that the quantum of the Directors' Charge is reasonably necessary at this time to address circumstances that could lead to potential directors' liability prior to the Comeback Hearing.

***F. Critical Suppliers' Relief***

182. As discussed above, the Applicants rely on certain Commodity Suppliers in their day-to-day operations. To preserve their business and maintain critical relationships, the Applicants are seeking authorization to pay amounts owing for goods and services supplied to the Applicants prior to the filing date up to a maximum aggregate amount of \$6,375,000. Such payments may only be made if the Applicants and the Monitor consent to the determination that the relevant supplier is critical to the business and operations of the relevant Applicant, or the preservation of the property of the relevant Applicant, such that payment is required to ensure ongoing supply.

***G. Relief Sought***

183. For the reasons set out herein, the OTE Group respectfully requests this Court grant the Initial Order.

**VIII. CONCLUSION**

184. The Applicants, with the assistance of their legal and financial advisors, have determined that the proposed CCAA proceedings represent the best available strategy to preserve the Applicants' business operations and to maximize value for OTE Group's stakeholders.

185. The OTE Group is in a very challenging financial position. Should the Gas Licences and Fuel Licences be canceled, the OTE Group faces a cessation of its operations, a potential liquidation of its assets, and the loss of its employees' jobs. The OTE Group requires the breathing space provided by CCAA protection to engage in a dialogue with and among its stakeholders with the goal of preserving its business and maximizing the ongoing value of the business and continuing employment for as many of its employees as is reasonably possible.

186. The granting of the requested Initial Order will maintain the "status quo" and permit an orderly restructuring and analysis of the OTE Group's affairs. The Applicants urgently require the protection of the CCAA in order to ensure that their business operations can continue without interruption.

187. I swear this Affidavit in support of an application for the relief set out above, and for no improper purpose.



SWORN AFFIRMED BEFORE ME over video teleconference this 27th day of January, 2023 pursuant to O. Reg 431/20, Administering Oath or Declaration Remotely. The affiant was located in the City of Wilsonville in the Province of Ontario, while the Commissioner was located in the City of Toronto in the Province of Ontario.

DocuSigned by:  
*Samantha Hans*  
402DBD39546546A...

DocuSigned by:  
*Scott Hill*  
77F3D36A129C418...  
**SCOTT HILL**

---

A Commissioner for taking Affidavits (*or as may be*)

**SAMANTHA HANS (LSO#: 84737H)**

This is Exhibit "A" of  
the Affidavit of Scott Hill  
Sworn before me this 27<sup>th</sup> day of January, 2023

A handwritten signature in blue ink, appearing to read "Samento Hill", is written above a horizontal line.

A Commissioner, etc.

Account #	Customer Name	Address	Address 2	First Nation
010259OTE	Townline Variety	7329 Indian Line Road.	Wilsonville, ON N0E 1Z0	Six Nations of the Grand River Territory
022200OTE	Bearpaw Gas Bar	310 Sour Springs Road.	Hagersville, ON N0A 1H0	Six Nations of the Grand River Territory
054598OTE	Moravian Corner Store	14787 Selton Line	Thamesville, ON N0P 2K0	Moravian of the Thames First Nation
084825OTE	KT Gas And Convenience	849 Brant County Highway 54	Caledonia, ON N3W 2G9	Six Nations of the Grand River Territory
107000OTE	PETERS PETRO	14615 Selton Line	Thamesville, ON N0P 2K0	Moravian of the Thames First Nation
112356OTE	Sit N Bull Gas	3783 6th Line Rd.	Ohswéken, ON N0A 1M0	Six Nations of the Grand River Territory
122756OTE	OASIS 54 GAS	865 Hwy #54	Brantford, ON N3T 5L9	Six Nations of the Grand River Territory
143835OTE	KANATA FUELS	892 Brant County Hwy # 54	Caledonia, ON N3W 2G9	Six Nations of the Grand River Territory
226969OTE	Ohswéken Gas, Grub and Goodies	1702 Chiefswood Rd	Ohswéken, ON N0A1M0	Six Nations of the Grand River Territory
311110OTE	Renmar Energy	3-1110 Highway # 54	Caledonia, ON N3W 2G9	Six Nations of the Grand River Territory
368163OTE	Wolfie's Pit Stop	956 Highway # 54	Ohswéken, ON N0A 1M0	Six Nations of the Grand River Territory
378166OTE	40 Fuel	1074 Williams Drive	Sarnia, ON N7T 7H5	Chippewas of Sarnia First Nation
406978TYN	Five Nations Tobacco and Fuels	142 ON-49, Deseronto	Deseronto, ON K0K 1X0	Tyendinaga Mohawk Territory
438804SNA	Petro Plus Travel Stop	2966 4th Line	Ohswéken, ON N0A 1M0	Six Nations of the Grand River Territory
498634DES	Speedway Gas	939 Hwy 49	Deseronto, ON K0K 1X0	Tyendinaga Mohawk Territory
505379SHA	John's Place	5379 Old Hwy 2	Shannonville, ON K0K 3A0	Tyendinaga Mohawk Territory
512662SN	Big Six Convenience	2662 Fourth Line	Ohswéken, ON N0A 1M0	Six Nations of the Grand River Territory
525155SHA	Gas N Go	5439 Old Hwy 2	Shannonville, ON K0K 3A0	Tyendinaga Mohawk Territory
533043DES	49 Quick Stop	215 ON-49	Deseronto, ON K0K 1X0	Tyendinaga Mohawk Territory
545380SHA	Fast Freddy's	5380 Old Hwy#2	Shannonville, On K0K3A0	Tyendinaga Mohawk Territory
575344ASP	Aspen-Dunhill Holdings o/a Free Flow Petroleum Pro	2379-6 Old Highway 2	Shannonville, ON K0K3A0	Tyendinaga Mohawk Territory
61WAHTAWHA	What A Convenience	2071 Muskoka Road 38	Bala, ON P0C 1A0	Wahta Mohawk Territory
65WOLFWAHT	Wolfe Energy	A-10 Ohaha 1080	Wahta, ON P0C 1A0	Wahta Native Reservation
71RTE54	Route 54 Variety & Gas	1086 Hwy 54	Ohswéken, ON N0A1M0	Six Nations of the Grand River Territory
73SMOKTYN	Xpress Gas and Variety	161 Hwy 49	Tyendinaga, ON	Tyendinaga Mohawk Territory
74SALRVRSR	Salmon River Enterprises	5363 Old Hwy #2	Shannonville, On K0K 3A0	Tyendinaga Mohawk Territory
75SHAWANGB	Shawanaga First Nation Gas & Variety	1 Tuckers Road East	Nobel, ON P0G 1G0	Shawanaga First Nation Territory
78TUGGYSOS	Tuggys One Stop	6957 Hwy 21	Allenford, ON N0H1A0	Saugeen First Nation
83CLFUELS	Curve Lake Fuels	1360 Mississauga St	Curve Lake, ON K0L1R0	Curve Lake First Nation
84OTTERGM	Otter Gas & Marine	93 Rollie's Bay Rd	Curve Lake, ON K0L 1R0	Curve Lake First Nation
85GIBSWAHT	Gibsons of Muskoka	P.O. Box 499	Bala, ON P0C1A0	Wahta Native Reservation
86ROOTESSG	Rootes Gas Bar	6 Scotch Settlement Rd.	Southampton, ON N0H 2L0	Saugeen First Nation
93BROCANBR	BROKEN CANOE TRADING POST	7 WEST ST	BLIND RIVER, ON P0R1B0	MISSISSAUGA FIRST NATION
97JESKEN	WAMPUM FUELS	101 EVAN JOHN ROAD	ONEIDA, ON N0L2G0	Oneida Nation of the Thames

This is Exhibit "B" of  
the Affidavit of Scott Hill  
Sworn before me this 27<sup>th</sup> day of January, 2023

A handwritten signature in blue ink, appearing to read "Samantha Hill".

---

A Commissioner, etc.

**Ministry of Finance**

Account Management and  
Collections Branch

33 King Street West  
Oshawa ON L1H 8H5  
Tel.: 905-243-5314  
Fax: 905-433-6989

**Ministère des Finances**

Direction de la gestion des comptes  
et de la perception

33, rue King Ouest  
Oshawa ON L1H 8H5  
Tél. : 905-243-5314  
Télééc. : 905-433-6989



**VIA EMAIL AND REGISTERED MAIL**

August 31, 2022

Mr. Scott Hill  
President

Original Traders Energy Ltd., General Partner of Original Traders Energy LP,  
A Limited Partnership  
3-1110 Highway 54  
Caledonia ON N3W 2G9

Dear Mr. Hill

**Re: Original Traders Energy Ltd., General Partner of Original Traders Energy LP, A Limited Partnership  
Update of Fuel and Gasoline Tax Registration Authorities  
Gasoline Tax Act, R.S.O. 1990 c. G.5, as amended (GTA)  
Fuel Tax Act, R.S.O. 1990 c. F.35, as amended (FTA)**

---

Further to your letter of August 30, 2022 and our discussion on August 31, 2022, I am writing to inform you that the Ministry of Finance (ministry) is prepared to issue conditional time-limited permits for the period of September 1, 2022, to October 3, 2022, for the following registration authorities held by Original Traders Energy Ltd:

- Importer Registration Certificate for fuel and gas taxes;
- Interjurisdictional Transporter Registration Certificate for fuel and gas taxes; and
- Exporter Registration Certificate for fuel tax.

The extension of Original Traders Energy Ltd. permits as well as its Collector Designations are conditional on the following requirements:

- Original Traders Energy Ltd. commits to having a weekly status meeting with the ministry to provide updates on the progress of the financial review;
- Original Traders Energy Ltd. provides the ministry with a summary of the report being prepared on the financial review from the retained independent financial advisor on or before September 21, 2022. The summary must also include a firm commitment date of when the initial payment of \$2,000,000 to be paid towards the current outstanding tax liability will be provided to the ministry;

- Original Traders Energy Ltd. will provide a 12-18 month repayment proposal to the ministry for the outstanding balance and accruing interest on or before October 3, 2022;
- If the ministry is agreeable to the proposed repayment plan, Original Traders Energy Ltd. will be required to provide the ministry's Collections department with its most current financial statements and enter into a formal payment arrangement; and
- Original Traders Energy Ltd. adheres to the repayment plan schedule for the remittance of payments towards the current tax liability; as well the returns and payment schedule for all anticipated future filings in accordance with subsections 3.2(1) and 8(2) of the GTA and subsections 3.2(1) and 10(1) of the FTA.

Currently, Original Traders Energy Ltd. is in default of its July 2022 return filings and has the following prior amounts outstanding including penalty and interest:

- a) Under the GTA - \$21,953,439.06
- b) Under the FTA - \$5,619,520.03

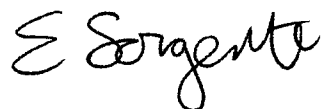
The ministry recognizes that Original Traders Energy Ltd. requires time to file the outstanding July 2022 returns and payments. The ministry requires that both the July and August returns and remittances be filed by the due dates for the August period; September 21, 2022 (gasoline) and September 26, 2022 (fuel). It is important to note that from a penalty and interest perspective the July 2022 remittances are overdue and considered late.

The ministry may immediately suspend Original Traders Energy Ltd.'s designations or registrations under both the GTA and FTA if they fail to meet the above conditions. As well, all or any part of the security remitted by Original Traders Energy Ltd. may be redeemed by the ministry in satisfaction of all or any part of the tax liability.

Given the information shared by Original Traders Energy Ltd. with the ministry in our August 24, 2022, meeting, the ministry will supply Original Traders Energy Ltd. with a synopsis of recent interactions with the company's former president by September 2, 2022. The ministry remains committed to assisting Original Traders Energy Ltd. in ensuring their returns filing and remittance obligations are understood.

If you have any concerns with the requirements outlined above, questions or require additional information, please contact Ron Hester, Regional Manager, Program Delivery at [Ron.Hester@Ontario.ca](mailto:Ron.Hester@Ontario.ca) or 905-441-5871.

Sincerely,



Senior Manager  
Program Delivery, Tax Administration  
Account Management and Collections Branch

**Ministry of Finance**

Account Management and  
Collections Branch

33 King Street West  
Oshawa ON L1H 8H5  
Tel.: 905-243-5314  
Fax: 905-433-6989

**Ministère des Finances**

Direction de la gestion des comptes  
et de la perception

33, rue King Ouest  
Oshawa ON L1H 8H5  
Tél. : 905-243-5314  
Télééc. : 905-433-6989



**VIA EMAIL AND REGISTERED MAIL**

August 26, 2022

Mr. Scott Hill  
President

Original Traders Energy Ltd., General Partner of Original Traders Energy LP,  
A Limited Partnership  
3-1110 Highway 54  
Caledonia ON N3W 2G9

Dear Mr. Hill

**Re: Original Traders Energy Ltd., General Partner of Original Traders Energy  
LP, A Limited Partnership  
Update of Fuel and Gasoline Tax Registration Authorities  
Gasoline Tax Act, R.S.O. 1990 c. G.5, as amended (GTA)  
Fuel Tax Act, R.S.O. 1990 c. F.35, as amended (FTA)**

---

Further to our discussion, I am writing to inform you that the Ministry of Finance (ministry) is prepared to issue conditional time-limited permits for the period from September 1, 2022, to December 31, 2022, for the following registration authorities held by Original Traders Energy Ltd:

- Importer Registration Certificate for fuel and gas taxes;
- Interjurisdictional Transporter Registration Certificate for fuel and gas taxes; and
- Exporter Registration Certificate for fuel tax.

The extension of Original Traders Energy Ltd. permits as well as its Collector Designations are conditional on the following requirements:

- Original Traders Energy Ltd. provides payment in the amount of \$2,000,000 by August 31, 2022, to be paid towards the current outstanding tax liability;
- Original Traders Energy Ltd. will provide a 12-18 month repayment proposal to the ministry for the remaining outstanding balance and accruing interest by October 3, 2022;
- If the ministry is agreeable to the proposed repayment plan, Original Traders Energy Ltd. will be required to provide the ministry's Collections department with

its most current financial statements and enter into a formal payment arrangement; and

- Original Traders Energy Ltd. adheres to the repayment plan schedule for the remittance of payments towards the current tax liability; as well the returns and payment schedule for all anticipated future filings in accordance with subsections 3.2(1) and 8(2) of the GTA and subsections 3.2(1) and 10(1) of the FTA.

Currently, Original Traders Energy Ltd. is in default of its July 2022 return filings and has the following prior amounts outstanding including penalty and interest:

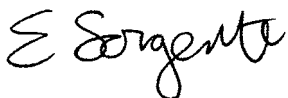
- a) Under the GTA - \$21,953,439.06
- b) Under the FTA - \$5,619,520.03

The ministry may immediately suspend Original Traders Energy Ltd.'s designations or registrations under both the GTA or FTA if they fail to meet the above conditions. As well, all or any part of the security remitted by Original Traders Energy Ltd. may be redeemed by the ministry in satisfaction of all or any part of the tax liability.

Given the information shared by Original Traders Energy Ltd. with the ministry in our August 24, 2022, meeting, the ministry will supply Original Traders Energy Ltd. with a synopsis of recent interactions with the company's former president. The ministry is committed to assisting Original Traders Energy Ltd. in ensuring their returns filing and remittance obligations are understood.

If you have any concerns with the requirements outlined above, questions or require additional information, please contact Ron Hester, Regional Manager, Program Delivery at [Ron.Hester@Ontario.ca](mailto:Ron.Hester@Ontario.ca) or 905-441-5871.

Sincerely,



Enzo Sorgente  
Senior Manager  
Program Delivery, Tax Administration  
Account Management and Collections Branch

- c Ron Hester, Regional Manager, Program Delivery
- c Dave Gerald, Tax Administration Manager, Program Delivery



This is Exhibit "C" of  
the Affidavit of Scott Hill  
Sworn before me this 27<sup>th</sup> day of January, 2023

A handwritten signature in blue ink, appearing to read "Samuel Hill", is written above a horizontal line.

---

A Commissioner, etc.



## Profile Report

ORIGINAL TRADERS ENERGY LP as of October 18, 2022

Act	Limited Partnerships Act
Type	Ontario Limited Partnership
Firm Name	ORIGINAL TRADERS ENERGY LP
Business Identification Number (BIN)	270936834
Declaration Status	Active
Declaration Date	August 30, 2017
Expiry Date	August 28, 2027
Principal Place of Business	1110 Brant Hwy 54, Unit 3, Caledonia, Ontario, Canada, N3W 2G9
Activity (NAICS Code)	[Not Provided] - [Not Provided]

Certified a true copy of the record of the Ministry of Government and Consumer Services.

*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.

## General Partners

Number of General Partners 1

## Partners

### Partner 1

Name	ORIGINAL TRADERS ENERGY LTD.
Ontario Corporation Number (OCN)	2585997
Entity Type	Ontario Business Corporation
Registered or Head Office Address	7331 Indian Line Road, Wilsonville, Ontario, Canada, N0E 1Z0

Certified a true copy of the record of the Ministry of Government and Consumer Services.

*V. Quintanilla W.*

Director/Registrar

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**Firm Name History**

**Name**

ORIGINAL TRADERS ENERGY LP

**Effective Date**

August 30, 2017

Certified a true copy of the record of the Ministry of Government and Consumer Services.

*V. Quintanilla W.*

Director/Registrar

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**Active Business Names**

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

Certified a true copy of the record of the Ministry of Government and Consumer Services.

*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.

### Expired or Cancelled Business Names

This entity does not have any expired or cancelled business names registered under the Business Names Act in Ontario.

Certified a true copy of the record of the Ministry of Government and Consumer Services.

*V. Quintanilla W.*

Director/Registrar

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## Document List

Filing Name	Effective Date
Renewal of an Ontario Limited Partnership Declaration	September 22, 2022
Declaration of Change to an Ontario Limited Partnership	January 10, 2018
LPA - File a Declaration of an Ontario Limited Partnership	August 30, 2017

Certified a true copy of the record of the Ministry of Government and Consumer Services.

*V. Quintanilla W.*

Director/Registrar

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This is Exhibit "D" of  
the Affidavit of Scott Hill  
Sworn before me this 27<sup>th</sup> day of January, 2023

A handwritten signature in blue ink, appearing to read "Samuel Hill", is written above a horizontal line.

---

A Commissioner, etc.





## Profile Report

ORIGINAL TRADERS ENERGY LTD. as of August 10, 2022

Act	Business Corporations Act
Type	Ontario Business Corporation
Name	ORIGINAL TRADERS ENERGY LTD.
Ontario Corporation Number (OCN)	2585997
Governing Jurisdiction	Canada - Ontario
Status	Active
Date of Incorporation	July 05, 2017
Registered or Head Office Address	7331 Indian Line Road, Wilsonville, Ontario, Canada, N0E 1Z0

Certified a true copy of the record of the Ministry of Government and Consumer Services.

*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 10

Name Scott HILL  
Address for Service 7493 Indian Line, Wilsonville, Ontario, Canada, N0E 1Z0  
Resident Canadian Yes  
Date Began July 20, 2017

Certified a true copy of the record of the Ministry of Government and Consumer Services.

*V. Quintanilla W.*

Director/Registrar

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**Active Officer(s)**

<b>Name</b>	Donald Herbert Miles HILL
<b>Position</b>	Vice-President
<b>Address for Service</b>	7331 Indian Line Road, Wilsonville, Ontario, Canada, N0E 1Z0
<b>Date Began</b>	July 14, 2022

<b>Name</b>	Scott HILL
<b>Position</b>	President
<b>Address for Service</b>	7493 Indian Line, Wilsonville, Ontario, Canada, N0E 1Z0
<b>Date Began</b>	July 14, 2022

Certified a true copy of the record of the Ministry of Government and Consumer Services.

*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.

**Inactive Administrators Reported on August 10, 2022 CIA Filing**

**Inactive Officer(s)**

<b>Name</b>	Scott HILL
<b>Position</b>	Vice-President
<b>Address for Service</b>	7493 Indian Line, Wilsonville, Ontario, Canada, N0E 1Z0
<b>Date Began</b>	July 05, 2017
<b>Date Ceased</b>	July 14, 2022

<b>Name</b>	Glenn D. PAGE
<b>Position</b>	President
<b>Address for Service</b>	2164 Heidi Avenue, Burlington, Ontario, Canada, L7M 3Y2
<b>Date Began</b>	July 05, 2017
<b>Date Ceased</b>	July 14, 2022

Certified a true copy of the record of the Ministry of Government and Consumer Services.

*V. Quintanilla W.*

Director/Registrar

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**Corporate Name History**

**Name**

ORIGINAL TRADERS ENERGY LTD.

**Effective Date**

July 05, 2017

Certified a true copy of the record of the Ministry of Government and Consumer Services.

*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 Business Names

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

Certified a true copy of the record of the Ministry of Government and Consumer Services.

*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.

### Expired or Cancelled Business Names

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

Certified a true copy of the record of the Ministry of Government and Consumer Services.

*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.

## Document List

Filing Name	Effective Date
CIA - Notice of Change PAF: Scott HILL	August 10, 2022
Annual Return - 2019 PAF: MILES HILL - DIRECTOR	March 16, 2021
CIA - Notice of Change PAF: GLENN PAGE - DIRECTOR	January 09, 2020
Annual Return - 2017 PAF: MILES HILL - DIRECTOR	July 14, 2019
Annual Return - 2018 PAF: MILES HILL - DIRECTOR	July 14, 2019
CIA - Notice of Change PAF: GLENN PAGE - OFFICER	March 29, 2018
CIA - Initial Return PAF: GLENN PAGE - OFFICER	January 03, 2018
BCA - Articles of Incorporation	July 05, 2017

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.

Certified a true copy of the record of the Ministry of Government and Consumer Services.

*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.



This is Exhibit "E" of  
the Affidavit of Scott Hill  
Sworn before me this 27<sup>th</sup> day of January, 2023

A handwritten signature in blue ink, appearing to read "Samantha Hill". The signature is written in a cursive style with a large initial 'S' and a distinct 'H'.

---

A Commissioner, etc.

## OFFICER'S DISCLOSURE AND INCUMBENCY CERTIFICATE

**TO** Royal Bank of Canada ("RBC")

**AND TO** ALL LAWYERS, Gowling WLG (Canada) LLP

**RE** Credit facilities established in favour of Original Traders Energy Limited Partnership pursuant to a loan agreement dated July 8, 2021 between RBC, as lender, Original Traders Energy Limited Partnership, as borrower, (as the same may be amended, modified, supplemented, extended, renewed, restated or replaced from time to time, the "**Credit Agreement**")

---

I, Glenn Page, the President of Original Traders Energy Ltd. (the "**Corporation**"), hereby certify for and on behalf of the Corporation, in its capacity as the general partner of Original Traders Energy Limited Partnership (the "**LP**"), hereby certify as follows:

1. I have read and am familiar with the provisions of the Credit Agreement and all documentation requested by RBC in connection therewith (the "**Security Documents**"). I have exercised due diligence by inquiring, investigating and searching information that in my opinion, is necessary or useful to support the statements contained in this Certificate.
2. The representations and warranties of the Corporation and the LP contained in the Credit Agreement and the Security Documents are true and correct in all material respects.
3. The Corporation is the sole general partner of the LP, a subsisting limited partnership formed and organized under the laws of the Province of Ontario. The full name of the LP is "Original Traders Energy Limited Partnership" and there is no other name used by or in connection with the LP.
4. Attached hereto as Schedule "A" are true and complete copies of the limited partnership agreement in respect of the LP dated July 15, 2019 (the "**Limited Partnership Agreement**") and Declaration under the *Limited Partnership Act* (Ontario) in respect of the LP (the "**Declaration**"). The Limited Partnership Agreement and the Declaration have not been amended and are in full force and effect. No steps or proceedings have been taken or are pending to amend, surrender or cancel the Limited Partnership Agreement or the Declaration. The Corporation, in its capacity as general partner of the LP, has not received any notice or other communication indicating that there exists any situation which, unless remedied, could result in the dissolution, termination or cancellation of the existence of the LP. The Limited Partnership Agreement is the only agreement between the limited partners of the LP relating to their relationship as limited partners of the LP.
5. Attached hereto as Schedule "B" is a true and complete copy of the Limited Partnership Report in respect of the LP issued by the Ontario Ministry of Government Services.
6. As of the date hereof, the persons whose names are set out in Schedule "C" are all the duly elected directors of the Corporation, in its capacity as general partner of the LP, and duly appointed officers of the Corporation, in its capacity as general partner of the LP, holding the offices set out opposite their respective names, and the signatures set out opposite their names are true specimens of their signatures.
7. Attached hereto as Schedule "D" is a true and complete copy of the resolutions duly passed by the directors of the Corporation, in its capacity as general partner of the LP, authorizing the execution and delivery of the Credit Agreement and the other Security Documents and the

performance of the obligations thereunder, which resolutions are the only resolutions of the directors pertaining to the subject matter thereof and the same is in full force and effect, unamended, as of the date hereof.

8. There are no provisions in the Limited Partnership Agreement that:
  - (a) restrict or limit the powers of the directors of the Corporation to: (i) borrow money on the credit of the LP, (ii) issue, reissue, sell or pledge debt obligations of the LP, (iii) give a guarantee on behalf of the LP to secure performance of an obligation of any person, or (iv) mortgage, hypothecate, pledge or otherwise create a security interest in all or any property of the LP, owned or subsequently acquired, to secure any obligation of the LP;
  - (b) require the Corporation to obtain the authorization of the limited partners of the Borrower to exercise the powers referred to in subsection (a) above; or
  - (c) restrict or limit the authority of the directors of the Corporation by resolution to delegate the powers referred to in subsection (a) to a director, a committee of directors or an officer of the Corporation.
9. No events have occurred which would permit or require any of the limited partners of the Borrower to dissolve, liquidate, or terminate the Borrower.
10. The Borrower has paid all required fees and penalties under the *Limited Partnership Act* (Ontario) and no such fees or penalties remain outstanding.
11. There are no actions, suits, proceedings, inquiries or investigations existing, pending or threatened, affecting the Corporation, in its capacity as general partner of the Borrower, and/or the Borrower in any court or before any federal, provincial or municipal or other government department, commission, board, tribunal, bureau or agency, Canadian or foreign, which might materially and adversely affect the financial condition, property, assets, operations or business of the Borrower or the ability of the Borrower to perform its obligations to RBC under the Credit Agreement and the Security Documents.
12. Attached hereto as Schedule "E" is a true and complete copy of the unit register of the Borrower.
13. No act or proceeding of or against the Borrower has been taken or, to the best of my knowledge, is pending in connection with the dissolution, liquidation, winding-up, bankruptcy, corporate arrangement or reorganization of the Borrower or any arrangement or restructuring in respect of the Borrower, and the Borrower has no knowledge of any such proceedings having been commenced or having been contemplated in respect of the Borrower by any other party.
14. No income taxes, transfer taxes and other taxes payable by the Borrower are in arrears.
15. The place of business/chief executive office in Canada for the Borrower and all assets, together with all books and records maintained by the Borrower, are held at the addresses provided for in Schedule "F".
16. There are no current:
  - (a) judicial, administrative, regulatory or similar proceedings (whether civil, quasi-criminal or criminal);

- (b) arbitration or other dispute settlement procedures; or
- (c) investigations or inquiries by any governmental, administrative, regulatory or similar body,

that, if determined adversely to the Borrower, would:


- (a) prohibit the Borrower from executing, delivering or performing its obligations under the Credit Agreement and the Security Documents;
  - (b) result in the creation of, or require the Borrower to create, any encumbrance other than pursuant to the Security Documents against any of the collateral; or
  - (c) result in the forfeiture of any of the collateral (other than the levying of execution against collateral to obtain payment of a judgment against the Borrower).
17. Any actions, suits or claims pending or threatened against the Borrower have been duly settled or compromised and, as of the date of this Certificate, there are no actions, suits or proceedings pending or threatened against the Borrower by or before court, administrative tribunal or other authority with jurisdiction which might result in any material change in the business or condition (financial or otherwise) of the Borrower.
18. The Borrower is not in breach of or in default under any material contract or agreement to which it is a party or by which it is bound or under any judgment, order, writ, injunction or decree of any court or under any order, licence, regulation or demand of any governmental authority, agency, tribunal, arbitrator or other authority to which the Borrower or any of its property is subject. The execution and delivery by the Borrower and the performance of its obligations under the Credit Agreement and the Security Documents do not breach or result in a default under any material contract or agreement to which it is a party or by which it is bound or under any judgment, order, writ, injunction or decree of any court or under any order, licence, regulation or demand of any governmental authority, agency, tribunal, arbitrator or other authority to which the Borrower or any of its property is subject.
19. None of the execution and delivery by the Borrower of the Credit Agreement and the Security Documents, the consummation of the transactions contemplated thereby, the fulfilment of the terms thereof nor the compliance with the terms and provisions thereof conflicts or will conflict with or results or will result in a breach of the terms, conditions or provisions or constitute default under any agreement, indenture or instrument of any kind whatsoever to which it is a party or by which it or any of its property is bound.
20. There has been no material adverse change in the financial condition, business or operations of the Borrower or otherwise since the date of the most recent financial statements provided by the Borrower to RBC.
21. No default or event of default (as such terms or analogous terms may be defined in the Credit Agreement) has occurred and is continuing.
22. There are no priority payables outstanding in respect of which payments owing by the Borrower are overdue.
23. The Borrower has obtained all consents and approvals necessary or desirable in connection with the completion of the transactions contemplated pursuant to the Credit Agreement, the Security Documents and any documents related thereto.

24. The Borrower is in compliance with all financial covenants set out in the Credit Agreement.
25. The Borrower is in possession of, and in good standing and compliance with, all necessary permits, licenses, authorizations and other approvals required to legally undertake and carry on the Borrower's business in the provinces where the Borrower carries on business.

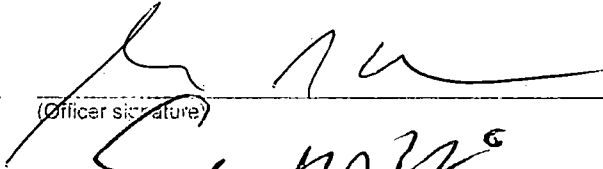
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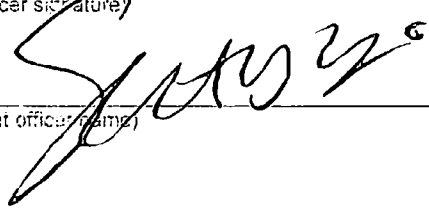
I acknowledge that this Certificate will be relied upon by RBC, as lender, Original Traders Energy LP, as borrower, and their respective counsel in connection with the Credit Agreement and the Security Documents, and the delivery of legal opinions required in connection therewith. I certify that it is true and correct in all respects and does not omit any information required to make the information contained in it not misleading.

Dated this 15<sup>th</sup> day of October, 2021.

  
\_\_\_\_\_  
(Witness signature)

(Print witness name)

  
\_\_\_\_\_  
(Officer signature)

  
\_\_\_\_\_  
(Print officer name)

**SCHEDULE "A"**  
**LIMITED PARTNERSHIP AGREEMENT AND DECLARATION**

See attached.

**ORIGINAL TRADERS ENERGY LP  
LIMITED PARTNERSHIP AGREEMENT**

Between

**ORIGINAL TRADERS ENERGY LTD.**

as General Partner

and

**MILES HILL**

as a Limited Partner

and

**SCOTT HILL**

as a Limited Partner

and

**2584861 ONTARIO INC.**

as a Limited Partner

and

**2590086 ONTARIO LTD.**

as a Limited Partner

and

**IMA ENTERPRISES INC.**

as a Limited Partner

and

**EACH OTHER PERSON ADMITTED TO THE PARTNERSHIP AS A LIMITED PARTNER**



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## LIMITED PARTNERSHIP AGREEMENT

THIS AGREEMENT is made as of the 5<sup>th</sup> day of July, 2017

BETWEEN:

**ORIGINAL TRADERS ENERGY LTD.**, a corporation incorporated under the laws of the Province of Ontario, as the general partner of the Partnership (the "General Partner")

- and -

**MILES HILL**, an individual resident in the Province of Ontario and a status Indian for purposes of the Indian Act (Canada) and as recognized by the Federal Department of Indian and Northern Affairs, as a limited partner of the Partnership (a "Limited Partner")

- and -

**SCOTT HILL**, an individual resident in the Province of Ontario and a status Indian for purposes of the Indian Act (Canada) and as recognized by the Federal Department of Indian and Northern Affairs, a Limited Partner

- and -

**2584861 ONTARIO INC.**, a corporation incorporated under the laws of the Province of Ontario, a Limited Partner

- and -

**2590086 ONTARIO LTD.**, a corporation incorporated under the laws of the Province of Ontario, a Limited Partner

- and -

**IMA ENTERPRISES INC.**, a corporation incorporated under the laws of the Province of Ontario, a Limited Partner

- and -

Each person who, from time to time, becomes a Limited Partner in accordance with the terms of this Agreement

### RECITALS:

- A. The General Partner and the Limited Partners wish to enter into an agreement to form a limited partnership under the *Limited Partnerships Act* (Ontario), as amended (the "Act") under the name Original Traders Energy LP (the "Partnership");

**NOW THEREFORE** this Agreement witnesses that in consideration of the covenants and agreements contained in this Agreement and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the parties agree each with the other as follows:

**ARTICLE 1  
INTERPRETATION**

**1.1 Definitions**

In this Agreement the following words have the following meanings:

"Act" means the *Limited Partnerships Act* (Ontario), as amended from time to time.

"Affected Partner" has the meaning set forth in Section 2.16(a)(iv);

"Affected Units" has the meaning set forth in Section 2.16(a)(iv);

"Affiliate" means, with respect to any corporation, any of:

- (a) a person who is an affiliate or associate (as those terms are defined in the *Securities Act* (Ontario)) of the corporation; or
- (b) a director or an officer of the corporation or of any person referred to in (a);

"Agreement" means this limited partnership agreement, including any and all schedules and exhibits, as it may be amended, confirmed, supplemented or restated by written agreement from time to time;

"Applicable Law" means, at any time, with respect to any Person, property, transaction or event, all applicable laws, statutes, regulations, treaties, judgments and decrees and (whether or not having the force of law) all applicable official directives, rules, consents, approvals, by-laws, permits, authorizations, guidelines, orders and policies of any Governmental Authority having authority over that Person, property, transaction or event;

"Arm's Length" has the meaning ascribed to such term in the Tax Act;

"Associate" means:

- (a) a person or company which beneficially owns or controls, directly or indirectly, voting securities entitling the person or company to more than 10% of the voting rights attached to outstanding securities of the issuer;
- (b) any partner of the person or company referred to in (a);
- (c) any trust or estate in which the person or company referred to in (a) has a substantial beneficial interest or in respect of which the person or company referred to in (a) serves as trustee or in a similar capacity; or
- (d) in the case of a person, a relative of that person, including:
  - (i) the spouse or adult interdependent partner of that person, or

- (ii) a relative of the person's spouse or adult interdependent partner if the relative has the same home as that person;

**"Auditor"** means a member in good standing of the Chartered Professional Accountants who is appointed by the General Partner as auditor of the Partnership;

**"Business"** is defined in Section 2.3;

**"Business Day"** means a day other than a Saturday, Sunday or statutory holiday in Ontario;

**"Capital Contribution"** of a Partner means the total amount of money or property contributed as capital to the Partnership by that Partner or a predecessor of that Partner;

**"Current Account"** has the meaning specified in Section 4.8;

**"Deadline"** has the meaning specified in Section 2.16(a)(iv);

**"Declaration"** means the declaration of limited partnership for the Partnership to be filed under the Act and all amendments thereto and renewals, replacements or restatements thereof;

**"Encumbrance"** means any security interest, mortgage, charge, pledge, hypothec, lien, restriction, option, adverse claim, title defect, right of others or other encumbrance of any kind;

**"Extraordinary Resolution"** means:

- (c) a resolution approved by more than 66⅔% of the votes cast by those Partners holding Units who are entitled to vote, in person or by proxy at a duly constituted meeting of Partners or at any adjournment thereof, called in accordance with this Agreement; or
- (d) a written resolution in one or more counterparts signed by Partners holding in the aggregate more than 66⅔% of the Units held by those Partners who are entitled to vote on that resolution at a meeting;

**"Fiscal Year"** has the meaning specified in Section 2.6;

**"GAAP"** means, at any time, accounting principles generally accepted in Canada, including those set out in the Chartered Professional Accountants for private enterprises under Part II of the CPA Canada Handbook.

**"General Partner"** means the initial general partner, Original Traders Energy Ltd., and any permitted corporate successor thereto, and any other person who becomes the general partner of the Partnership pursuant to Sections 7.13 or 7.14 of this Agreement;

**"Governmental Authority"** means:

- (a) any federal, provincial, state, local, municipal, regional, territorial, aboriginal, or other government, governmental or public department, branch, ministry, or court, domestic or foreign, including any district, agency, commission, board, arbitration panel or authority and any subdivision of any of them exercising or entitled to exercise any administrative, executive, judicial, ministerial, prerogative, legislative, regulatory, or taxing authority or power of any nature; and

- (b) any quasi-governmental or private body exercising any regulatory, expropriation or taxing authority under or for the account of any of them, and any subdivision of any of them

**"Investment Canada Act"** means the *Investment Canada Act* (Canada), as amended from time to time;

**"Limited Partners"** means the Limited Partners listed herein, and any other person who, from time to time, becomes a limited partner of the Partnership in accordance with the terms of this Agreement;

**"Net Income"** or **"Net Loss"** means the net income or loss of the Partnership for a Fiscal Year determined in accordance with GAAP;

**"Ordinary Resolution"** means:

- (a) a resolution approved by more than 50% of the votes cast by those Partners holding Units who are entitled to vote, in person or by proxy at a duly constituted meeting of Partners or at any adjournment thereof, called in accordance with this Agreement; or
- (b) a written resolution in one or more counterparts signed by Partners holding in the aggregate more than 50% of the Units held by those Partners who are entitled to vote on that resolution at a meeting;

**"Partners"** means the General Partner and the Limited Partners and **"Partner"** means any one of them;

**"Partnership"** means Original Traders Energy LP;

**"Person"** means an individual, corporation, body corporate, partnership, joint venture, association, trust or unincorporated organization or any trustee, executor, administrator or other legal representative;

**"Register"** means the register of Limited Partners maintained by the General Partner in accordance with this Agreement and the Act;

**"Requisitioning Partners"** has the meaning specified in Section 9.1;

**"Sell Notice"** has the meaning specified in Section 2.16(a)(iv);

**"Subscription Form"** means a subscription agreement in a form approved by the General Partner;

**"Tax Act"** means the *Income Tax Act* (Canada) R.S.C. 1985 (5<sup>th</sup> Supp.), as amended;

**"Taxable Income"** or **"Tax Loss"** means the amount of income or loss of the Partnership for a Fiscal Year determined by the General Partner pursuant to the provisions of the Tax Act;

**"Unit Certificate"** has the meaning specified in Section 3.5(a);

**"Units"** means limited partnership units of the Partnership.

## 1.2 Headings

In this Agreement, the headings are for convenience of reference only and do not form a part of this Agreement and are not to be considered in the interpretation of this Agreement.



### **1.3 Interpretation**

In this Agreement,

- (a) words importing the masculine gender include the feminine and neuter genders, corporations, partnerships and other persons, and words in the singular include the plural, and vice versa, wherever the context requires;
- (b) all references to designated Articles, Sections and other subdivisions are to the designated Articles, Sections and other subdivisions of this Agreement;
- (c) all accounting terms not otherwise defined will have the meanings assigned to them by, and all computations to be made will be made in accordance with, GAAP;
- (d) any reference to a statute will include and will be deemed to be a reference to the regulations and rules made pursuant to it, and to all amendments made to the statute, the regulations and the rules in force from time to time, and to any statute, regulations or rules that may be passed which has the effect of supplementing or suspending the statute referred to or the relevant regulation;
- (e) any reference to a person will include and will be deemed to be a reference to any person that is a successor to that person; and
- (f) "hereof", "hereto", "herein", and "hereunder" mean and refer to this Agreement and not to any particular Article, Section or other subdivision.

### **1.4 Currency**

All references to currency in this Agreement are references to Canadian currency.

## **ARTICLE 2 RELATIONSHIP BETWEEN PARTNERS**

### **2.1 Formation of Partnership**

The Partners hereby form the Partnership named "Original Traders Energy LP" under the laws of the Province of Ontario. The Partnership is effective as a limited partnership from the date on which the Declaration is registered in accordance with the Act. With the approval of the Partners by Extraordinary Resolution, the General Partner may change the name of the Partnership and file an amendment to the Declaration recording the change of name of the Partnership.

### **2.2 Maintaining Status of Partnership**

The General Partner shall be the general partner of the Partnership, and shall do all things and shall cause to be executed and filed all such certificates, declarations, instruments and documents as may be required under the laws of the Province of Ontario and any other province having jurisdiction to effect the constitution of the Partnership. The General Partner and, if requested by the General Partner, the Limited Partners shall execute and deliver as promptly as possible any documents that may be necessary or desirable to accomplish the purposes of this Agreement or to give effect to the formation and operation of the Partnership under any and all applicable laws. The General Partner shall take all necessary actions on

the basis of information available to it in order to maintain the status of the Partnership as a limited partnership under the Act during the term of the Partnership.

### **2.3 Business of the Partnership**

The business of the Partnership will consist of activities related to the investment, development and operation of oil upgrading facilities for the production of consumer grade oil products, ancillary matters related thereto and such other business as the Partners may determine by Extraordinary Resolution from time to time (the "Business").

### **2.4 Business in Other Jurisdictions**

The Partnership will not carry on business in any jurisdiction unless the General Partner has taken all steps which may be required by the laws of that jurisdiction for the Limited Partners to benefit from limited liability to substantially the same extent that the Limited Partners enjoy limited liability under the Act. The Partnership will not carry on business in any jurisdiction in which the laws do not recognize the liability of the Limited Partners to be limited unless approved by the Partners by way of an Extraordinary Resolution. The Partnership will carry on business in a manner so as to ensure, to the greatest extent possible, the limited liability of the Limited Partners, and the General Partner will register the Partnership in other jurisdictions where the General Partner considers it appropriate to do so.

### **2.5 Office of the Partnership**

The principal office of the Partnership will be located at 7331 Indian Line Road, Wilsonville, ON N0E 1Z0. The General Partner may change the location of the principal office provided that the General Partner gives notice as outlined in that Section 12.1.

### **2.6 Fiscal Year**

The fiscal period of the Partnership will end on December 31 of each year or on the date of dissolution or other termination of the Partnership. Each fiscal period is referred to in this Agreement as a "Fiscal Year".

### **2.7 Status of the General Partner**

The General Partner represents, warrants, covenants and agrees with each Limited Partner that the General Partner:

- (a) is a corporation incorporated and validly subsisting under the laws of the Province of Ontario;
- (b) has the capacity and corporate authority to act as a General Partner and to perform its obligations under this Agreement, and such obligations do not conflict with nor do they result in a breach of any of its constating documents, by-laws or any agreement by which it is bound;
- (c) as long as it is General Partner, it will not carry on any business other than that of General Partner;
- (d) will act in good faith and in the best interests of the Partnership in carrying out its obligations under this Agreement;

- (e) will exercise the degree of care, diligence and skill that a reasonably prudent and qualified manager would exercise in the management of the business and affairs of the Partnership; and
- (f) holds and will maintain the registrations necessary for the conduct of its business and has and will continue to have all licenses and permits necessary to carry on its business as the General Partner in all jurisdictions where the activities of the Partnership require that licensing or other form of registration of the General Partner.

## **2.8 Status of the Limited Partners**

Each Limited Partner severally represents, warrants and covenants to each other Limited Partner and to the General Partner that:

- (a) such Limited Partner, if a corporation, is a valid and subsisting corporation, has the necessary corporate capacity and authority to execute and deliver this Agreement and to observe and perform its covenants and obligations hereunder, and has taken all necessary corporate action in respect thereof and that it has purchased its Units as principal for its own account, or, if a partnership, syndicate or other form of unincorporated organization, has the necessary legal capacity and authority to execute and deliver this Agreement and to observe and perform its covenants and obligations hereunder and has obtained all necessary approvals in respect thereof, and that it has purchased its Units as principal for its own account;
- (b) such Limited Partner, if an individual, is of the full age of majority and has the legal capacity and competence to execute this Agreement and take all action pursuant hereto, and that it has purchased its Units as principal for its own account;
- (c) is "resident in Canada" for the purposes of the Tax Act and, if the Limited Partner is a partnership or limited partnership, each of the partners in that partnership or limited partnership is also "resident in Canada" within the meaning of that section and will maintain such status during any time in which Units are held by the such Limited Partner;
- (d) such Limited Partner has not financed and will not finance the acquisition of Units with financing for which recourse is or is deemed to be limited for the purposes of the Tax Act;
- (e) such Limited Partner is not a financial institution;
- (f) the Limited Partner is not a "non-Canadian" within the meaning of the Investment Canada Act;
- (g) the Limited Partner understands that the rights of Limited Partners to transfer Units is restricted, and has been independently advised as to restrictions with respect to trading in the Units imposed by this Agreement and by applicable securities legislation in the jurisdiction in which the Limited Partner resides, confirms that no representation has been made to the Limited Partner by or on behalf of the Partnership with respect thereto, acknowledges that the Limited Partner is aware of the characteristics of the Units, the risks relating to an investment therein and of the fact that the Limited Partner may not be able to resell the Units, except in accordance with limited exemptions under applicable securities legislation and regulatory policy;

- (h) this Agreement has been duly and validly authorized by, and constitutes a legal, valid, binding and enforceable obligation of, the Limited Partner;
- (i) the Limited Partner has had the opportunity to consult his, her or its own independent professional advisors with respect to the income tax consequences of purchasing the Units;
- (j) the Limited Partner has such knowledge in financial and business affairs as to be capable of evaluating the merits and risks of an investment in Units and he, she or it is able to bear the economic risk of loss of his, her or its investment; and
- (k) will, at the request of the General Partner, provide such evidence of its status as the General Partner may reasonably require.

## **2.9 Survival of Representations**

- (a) The representations contained in this Article will survive the execution of this Agreement and each party is obligated, as long as it is a General Partner or Limited Partner, as the case may be, to ensure the continuing accuracy of each representation made.
- (b) If at any time any Limited Partner becomes aware that the Limited Partner will be unable to represent and warrant the matters in Section 2.8, such Limited Partner covenants, agrees and undertakes that it will: (i) immediately notify the General Partner of that fact (prior to becoming unable to so represent) and (ii) comply with the provisions of Section 2.16.

## **2.10 Limitation on Authority of Limited Partners**

Unless a Limited Partner is also the General Partner, no Limited Partner will:

- (a) take part in the administration, control, management or operation of the business of the Partnership or exercise any power in connection therewith or transact business on behalf of the Partnership;
- (b) execute any document which binds or purports to bind any other Limited Partner or the Partnership;
- (c) hold that Limited Partner out as having the power or authority to bind any other Limited Partner or the Partnership;
- (d) have any authority or power to act for or undertake any obligation or responsibility on behalf of any other Partner or the Partnership;
- (e) bring any action for partition or sale or otherwise in connection with the Partnership, or any interest in any property of the Partnership, whether real or personal, tangible or intangible, or file or register or permit to be filed, registered or remain undischarged any lien or charge in respect of any property of the Partnership; or
- (f) compel or seek a partition, judicial or otherwise, of any of the assets of the Partnership distributed or to be distributed to the Partners in kind in accordance with this Agreement.

## **2.11 Promise to Execute and Record**

Each Limited Partner hereby agrees to execute and record or file as and where required:

- (a) this Agreement, any amendment to this Agreement authorized under Article 11 and any other instruments or documents required to continue and keep in good standing the Partnership as a limited partnership under the Act, or otherwise to comply with the laws of any jurisdiction in which the Partnership may carry on business or own or lease property in order to maintain the limited liability of the Limit Partners and to comply with the applicable laws of that jurisdiction (including any amendments to the Declaration or the Register as may be necessary to reflect the admission to the Partnership of subscribers for or transferees of any Units as contemplated by this Agreement);
- (b) all instruments and any amendments to the Declaration necessary to reflect any amendment to this Agreement;
- (c) any instrument required in connection with the dissolution and termination of the Partnership in accordance with the provisions of this Agreement, including any elections under the Tax Act and under any similar legislation;
- (d) the documents necessary to be filed with the appropriate governmental body or authority in connection with the business, property, assets and undertaking of the Partnership;
- (e) the documents necessary to give effect to the business of the Partnership;
- (f) the documents necessary to give effect to the assignment of a Unit or the admission of a subscriber for or assignee of Units to the Partnership; and
- (g) all other instruments and documents on the Limited Partner's behalf and in the Limited Partner's name or in the name of the Partnership as may be deemed necessary by the General Partner to carry out fully this Agreement in accordance with its terms.

## **2.12 Unlimited Liability of the General Partner**

The General Partner has unlimited liability for the debts, liabilities and obligations of the Partnership, subject to the Act and this Agreement.

## **2.13 Limited Liability of Limited Partners**

Subject to the provisions of the Act, the liability of each Limited Partner for the debts, liabilities and obligations of the Partnership will be limited to its Capital Contribution of that Limited Partner plus such Limited Partner's share of undistributed income of the Partnership. A Limited Partner will not be liable for any further claims or assessments or be required to make further contributions to the Partnership, except as specifically provided for herein.

## **2.14 Indemnity of Limited Partner and the Partnership**

The General Partner will indemnify and hold harmless each Limited Partner (including any former Limited Partner) for all costs, expenses, damages or liabilities suffered or incurred by: (i) the Limited Partner if the limited liability of that Limited Partner is lost for or by reason of the negligence of the

General Partner in performing its duties and obligations under this Agreement; or (ii) the Partnership as a result of any breach by the General Partner of this Agreement or its standard of care set forth herein, including any legal expenses incurred by the Partnership in defending an action based in whole or in part upon an allegation that the General Partner has been guilty of such breach, if the defence of such action is substantially unsuccessful with respect to such allegations. If any such action is settled by the General Partner, the action will be deemed, for the purposes of this Section, to have been unsuccessfully defended unless the settlement is approved either by an order of a court of competent jurisdiction or by an Ordinary Resolution.

## **2.15 Compliance with Laws**

Each Limited Partner will, on the request of the General Partner, immediately execute any documents considered by the General Partner, acting reasonably, to be necessary to comply with any applicable law or regulation of any jurisdiction in Canada, for the continuation, operation or good standing of the Partnership.

## **2.16 Evidence of Status and Sale of Affected Units**

- (a) Each Limited Partner covenants and agrees that it will, upon request, promptly provide evidence to the General Partner that the representations and warranties set out in Section 2.8 are true and correct. If:
- (i) a Limited Partner fails to comply with that request;
  - (ii) reasonably satisfactory evidence is not provided; or
  - (iii) the General Partner otherwise determines that a person is in contravention of Section 2.8, then
  - (iv) the General Partner, by written notice (a "Sell Notice") to that Limited Partner (the "Affected Partner"), may require the Affected Partner to comply with Section 2.8, or sell the Units owned by the Affected Partner (the "Affected Units"), within 60 days from the date of the Sell Notice (the "Deadline").
- (b) If the Affected Partner has not complied with Section 2.8 or the Affected Units have not been sold by the Affected Partner on or prior to the Deadline, the General Partner may sell the Affected Units on behalf of the Affected Partner without further notice on and subject to the terms contained in this Agreement. The General Partner may sell Affected Units in such manner as the General Partner determines in its discretion. For all purposes of a sale, the General Partner is deemed to be the agent and lawful attorney of the Affected Partner. The net proceeds of any sale of Affected Units will be the net proceeds after deduction of any commissions, taxes or other costs of sale.
- (c) If the Affected Units are sold by the General Partner, the Affected Partner will have the right only to receive the net proceeds of that sale. The Partnership will deposit an amount equal to those net proceeds in an account of the Partnership. The amount of that deposit will be payable to the Affected Partner upon presentation of the Affected Partner's acceptance and confirmation of the sale on terms acceptable to the General Partner. Any interest earned on any amount so deposited, net of any applicable taxes, will accrue to the benefit of the Affected Partner.

- (d) From and after the date of that deposit, the Affected Partner will not be entitled to any of the rights under this Agreement in respect of the Affected Units, other than the right to receive the funds so deposited as provided in this Agreement and the Affected Partner will not be entitled to any interest in the Affected Units.
- (e) Notwithstanding anything contained in this Agreement, if the General Partner determines that a Limited Partner has become an Affected Partner, the Affected Partner will be deemed to have ceased to be a Limited Partner effective immediately prior to the date of contravention and will not be entitled to any distributions relating to the Affected Units or to exercise the voting rights attached to the Affected Units, and the Affected Units will be deemed not to be outstanding until acquired by a new holder or owner for the purposes of the Tax Act or until the Affected Partner brings itself into compliance with Section 2.8, provided that holders of other Units will not be entitled to any portion of Partnership property that would otherwise have been paid or payable in respect of the Affected Units had they not been Affected Units.
- (f) Notwithstanding anything contained herein, the General Partner may waive the application of this Section.

### **ARTICLE 3 THE UNITS**

#### **3.1 Authorized Units**

The interests of Limited Partners in the Partnership will be divided into and represented by Units. The Partnership is authorized to issue an unlimited number Units.

#### **3.2 Attributes of Units**

- (a) Each Unit will be identical to all other Units in all respects and, accordingly, will entitle the holder to the same rights and obligations as a holder of any other Unit. No Limited Partner will, in respect of any Unit held by that Limited Partner, be entitled in any circumstance to any preference, priority or right over any other Limited Partner in respect of any Unit held by the other Limited Partner.
- (b) Each Limited Partner's interest will represent the proportion of the total interest of all Limited Partners in the Partnership equal to the number of Units held by it divided by the total number of Units outstanding at any time.
- (c) At all meetings of Partners each Limited Partner will be entitled to one vote for each Unit held.
- (d) Except as provided in this Agreement, each Unit is entitled to participate equally with respect to all distributions made by the Partnership, including distributions of net income and net realized capital gains, if any.

#### **3.3 Units Fully-Paid and Non-Assessable.**

The Partnership will issue Units only as fully-paid and non-assessable.

### **3.4 No Fractional Units**

The Partnership will not issue any fractional Units.

### **3.5 Unit Certificates**

- (a) Units will be issued in registered form. All Units will be represented by a fully registered certificate ("Unit Certificate"). Each Limited Partner will be entitled to a Unit Certificate or other instrument from the Partnership evidencing the Limited Partner's ownership of Units.
- (b) Every Unit Certificate must be signed by at least one officer or director of the General Partner and that signature may be mechanically reproduced. The validity of a Unit Certificate will not be affected by the circumstance that a Person whose signature is so reproduced is deceased or no longer holds the office which he or she held when the reproduction of his or her signature in that office was authorized.
- (c) Unit Certificates must be returned to the General Partner prior to the processing of transfer or redemption requests.

### **3.6 Changes in Membership of Partnership**

- (a) No name or address of a Limited Partner will be changed and no transfer of a Unit or substitution or addition of a Limited Partner in the Partnership will be recorded on the Register except pursuant to a notice in writing received by the General Partner.
- (b) No change of name or address of a Limited Partner, no transfer of a Unit and no admission of a substituted Limited Partner in the Partnership will be effective under this Agreement until all reasonable requirements, as determined by the General Partner, have been met, including the requirements set out in this Section 3.6, and until that change, transfer or substitution is duly reflected in an amendment to the Register as may be required by the Act or any other Applicable Law, and all filings required by any Applicable Law have been made.
- (c) The rights and obligations of a transferee of Units as a Limited Partner under this Agreement commence and are enforceable by and against a substituted Limited Partner on the date the Register has been amended as required by Section 3.6(a).
- (d) If the transferee complies with the provisions of this Agreement and is entitled to become a Limited Partner the General Partner will be authorized to admit the transferee to the Partnership as a substituted Limited Partner and the Limited Partners consent to the admission of, and will admit, the transferee to the Partnership as a substituted Limited Partner, without further act of the Limited Partners, other than as may be required by Applicable Law.
- (e) No transfer of a fraction of a Unit may be made or will be recognized or entered into or recorded in the Register.
- (f) The Register, as it may be amended, will be conclusive for all purposes of the Partnership as to the names and addresses of the Limited Partners.



### **3.7 No Transfer Except in Compliance with this Agreement**

Subject to Section 3.16, each Limited Partner warrants, represents and agrees that such Limited Partner is, and will be so long as that Limited Partner continues to hold Units, the beneficial owner of all those Units which are from time to time registered in the name of that Limited Partner. No Limited Partner will transfer the legal or beneficial ownership of any Units, except in accordance with the provisions of this Agreement. The application of this Agreement to any such transfer may be waived by Extraordinary Resolution.

### **3.8 Permitted Transfers of Units**

A Limited Partner may not sell, assign or otherwise transfer, pledge or encumber any Unit or any other interest it has in the Partnership without the prior written consent of the General Partner, which consent the General Partner may grant or withhold in its discretion.

### **3.9 Transfers To an Affiliate**

At any time during the term of this Agreement, a Limited Partner may transfer all or part of that Limited Partner's Units to an Affiliate without having to comply with the provisions of Section 3.8, provided that prior to the transfer:

- (a) the transferring Limited Partner delivers to the General Partner a sworn statutory declaration (or, in the case of a corporation, a statutory declaration of a senior officer) that the transferee is an Affiliate of the transferring Limited Partner;
- (b) the transferring Limited Partner and the Affiliate deliver to the General Partner an agreement addressed to the General Partner and all Limited Partners from time to time that:
  - (i) so long as the Affiliate is a Limited Partner, it will be an Affiliate of the transferring Limited Partner;
  - (ii) the Affiliate will be bound by this Agreement and the transferring Limited Partner will be jointly and severally liable with the Affiliate for the observance and performance of the agreements and obligations of the Affiliate under this Agreement;
  - (iii) the transferring Limited Partner will be entitled to represent the Affiliate in any dealings with the Partnership, the General Partner or any other Limited Partner concerning this Agreement (including, without limitation, any agreement, consent, approval or waiver under or in respect of this agreement), and any party to this Agreement may act in reliance thereon without any need to make any enquiries of the Affiliate; and
  - (iv) the transferring Limited Partner delivers notice to the General Partner of the number of Units transferred to the Affiliate.

The General Partner will notify the Limited Partners of the details of any Units transferred under this Section.

### **3.10 Transferee Bound**

A transferee of a Unit will, upon becoming a Limited Partner, be conclusively deemed to have acknowledged and agreed to be bound by the provisions of this Agreement as a Limited Partner, including the representations and warranties contained in Section 2.8, as applicable, and will be conclusively deemed to have provided the General Partner with the power of attorney described in Section 7.11.

### **3.11 Documentation on Transfer**

If a transferor of Units is a firm or a corporation, or purports to assign Units in any representative capacity, or if an assignment results from the death, mental incapacity or bankruptcy of a Limited Partner or is otherwise involuntary the transferor or the transferor's legal representative will furnish to the General Partner any documents, certificates, assurances, court orders or other instruments as the General Partner may reasonably require in order to verify that the transfer has been duly authorized.

### **3.12 General Partner May Hold Units**

The General Partner may purchase and hold Units. If the General Partner owns Units, the General Partner will continue to be the general partner of the Partnership but the General Partner will also, as the holder of such Units, have the rights and obligations of a Limited Partner in respect of those Units.

### **3.13 Registrar and Transfer Agent**

The General Partner will act as registrar and transfer agent of the Units and will maintain such books as are necessary to record the names and addresses of the Limited Partner, the number and type of units held by each Limited Partner, and the particulars of transfers of Units. The General Partner will perform all other duties usually performed by a registrar and transfer agent with certificates of shares in a corporation, except as the same may be modified by reason of the nature of the Units.

### **3.14 Inspection of Register**

A Limited Partner, or an agent of a Limited Partner duly authorized in writing, has the right to inspect and make extracts from the Register during normal business hours, and, upon payment of a reasonable fee to the registrar, to obtain a copy of the Register within a period of 10 days from the date of the filing of the written request therefor with the General Partner.

### **3.15 Assignment of Units**

Neither the Partnership nor the General Partner will charge a Limited Partner for any administrative or other expenses incurred with respect to a transfer or assignment of Units. Units must be transferred and assigned in writing in a form acceptable to, and completed and executed in a manner acceptable to, the General Partner. An assignment of Units will be signed by the transferor and transferee and will be accompanied by the Unit Certificate(s) issued by the Partnership which represents the Units to be transferred and assigned. Where the transferee complies with all applicable provisions of this Agreement and is entitled to become a Limited Partner, the General Partner is authorized to admit the transferee to the Partnership as a Limited Partner and the Limited Partner hereby consent to the admission of, and will admit, the transferee to the Partnership as a Limited Partner, without further act of the Limited Partner (other than as may be required by this Agreement or by law).

### **3.16 Non-Recognition of Trusts or Beneficial Interest**

Units may be held by nominees on behalf of the beneficial owners. Notwithstanding the foregoing, except as provided for in this Agreement, as required by law or as required by the General Partner in its discretion, no person will be recognized by the Partnership or any Partner as holding any Unit in trust, or on behalf of another person with the beneficial interest in that other person, and the Partnership and Partners will not be bound or compelled in any way to recognize (even when having actual notice) any equitable, contingent, future or partial interest in any Unit or in any fractional part of a Unit or any other rights in respect of any Unit except an absolute right to the entirety of the Unit. The General Partner shall be entitled to rely upon the Register as final and conclusive proof of any Limited Partner's interest in the Partnership.

### **3.17 Lost Certificates**

Where a Limited Partner claims that a Unit Certificate representing Units has been defaced, lost, destroyed or wrongfully taken, the General Partner will cause to be issued a new Unit Certificate in substitution for the original Unit Certificate if the Limited Partner files with the General Partner a form of proof of loss acceptable to the General Partner, and, at the option of the General Partner, an indemnity bond in form and amount satisfactory to the General Partner to protect the General Partner and the Partnership from any loss, cost or damage that they may incur or suffer by complying with the request to issue a new Unit Certificate, and if the Limited Partner satisfies such other reasonable requirements as are imposed by the General Partner.

## **ARTICLE 4 UNIT OFFERINGS CAPITAL CONTRIBUTIONS AND ACCOUNTS**

### **4.1 Unit Offerings**

The General Partner is authorized to raise capital for the Partnership by offering Units and admitting subscribers for Units as Limited Partners. With the approval of the Partners by way of Extraordinary Resolution, the General Partner may solicit or cause to be solicited, subscriptions for the Units. With the approval of the Partners by way of Extraordinary Resolution, the General Partner may determine the terms of subscriptions and the issuance of Units and may do all things that it deems necessary in connection therewith.

### **4.2 Subscription for Units**

Each subscriber will complete and execute the applicable Subscription Form setting out, among other things, the total subscription price for the Units subscribed for, and that subscription price will be the subscriber's agreed upon Capital Contribution.

### **4.3 Acceptance of Subscription Form by General Partner**

The General Partner will have the right, in its discretion, to refuse to accept any Subscription Form, and will reject Subscription Forms submitted by a subscriber who is, or who acts on behalf of a Person who will have a beneficial interest in the Units being subscribed for who does not satisfy the representations, warranties and covenants set out in Section 2.8. If, for any reason, a Subscription Form is not accepted, the General Partner will promptly redeliver to the subscriber the Subscription Form and any subscription monies or cheques representing subscription monies received from that subscriber for the purchase of Units, without interest or deduction.

#### **4.4 Admittance as Limited Partner**

Upon acceptance by the General Partner of any Subscription Form, all Partners will be deemed to consent to the admission of the subscriber as a Limited Partner, the General Partner will issue the number of Units the subscriber has subscribed for, will execute this Agreement on behalf of the subscriber, will cause the Register to be amended, and will amend and file any other documents, as may be required by the Act or under any other Applicable Law. The rights and obligations of a subscriber for Units as a Limited Partner commence and are enforceable by and upon that subscriber on the date on which the Register has been amended as required by this Section 4.4.

#### **4.5 Capital**

The capital of the Partnership consists of the aggregate of all Capital Contributions made and not returned to the Partners.

#### **4.6 Initial General Partner Contribution**

On the date hereof, the General Partner shall contribute \$100 to the Partnership.

#### **4.7 Limited Partner Contributions**

On the date hereof the Limited Partners shall contribute capital and subscribe for Units as set out in Schedule "A" hereto and such capital contributions and Unit subscription amounts shall be credited to such Limited Partner's capital accounts. Additional Units may be issued to the Limited Partners at a price per Unit determined by the Partners by way of Extraordinary Resolution.

#### **4.8 Current Accounts**

The General Partner will establish and maintain on the books of the Partnership the following accounts for each Partner:

- (a) an individual capital account which shall be credited by the amount of any Capital Contribution made by such Partner and shall be debited by the amount of any capital distributed or returned to such Partner; and
- (b) an individual current account which shall be credited by the amount of Net Income and all other amounts allocated to such Partner and shall be debited by the amount of Net Loss and all other amounts allocated to such Partner (the "Current Account").

#### **4.9 No Right to Withdraw Amounts**

No Partner will have any right to withdraw any amount or receive any advance or distribution from the Partnership except as expressly provided for in this Agreement and no advance or distribution to any Partner will be deemed a return or withdrawal of amounts contributed to the capital of the Partnership except as expressly provided in this Agreement, but if any court of competent jurisdiction at any time determines that notwithstanding the provisions of this Agreement a Limited Partner is obligated to pay any amount distributed to such Limited Partner to or for the account of the Partnership or to any creditor of the Partnership such obligation will be the obligation of such Limited Partner.

#### **4.10 No Interest Payable on Capital or Current Accounts**

No Partner will have the right to receive interest on any capital or any credit balance in the capital account or Current Account of such Partner. No Partner will be liable to pay interest to the Partnership on any capital or Capital Contribution returned to such Partner or on any authorized negative balance in the capital account or Current Account of such Partner.

#### **4.11 Negative Balance in Capital or Current Accounts**

The interest of a Partner in the Partnership will not terminate by reason of the return of amounts contributed to the capital of the Partnership or a negative balance in the capital account or Current Account of such Partner.

#### **4.12 Determinations by General Partner**

All matters concerning the computation of capital, Current Accounts, the allocation of items of Partnership income, gain, loss, deduction and expense for all purposes of this Agreement and the adoption of any accounting procedures not expressly provided for by the terms of this Agreement shall be determined by the General Partner. Such determinations shall be final and conclusive as to all Partners. Without in any way limiting the scope of the foregoing, if and to the extent that, for income tax purposes, any item of income, gain, loss, deduction or expense of any Partner or the Partnership is constructively attributed to, respectively, the Partnership or any Partner, or any contribution to or distribution by the Partnership or any payment by any Partner or the Partnership is re-characterized, the General Partner may, in its discretion and without limitation, specially allocate items of Partnership income, gain, loss, deduction and expense and/or make correlative adjustments to the Current Accounts in a manner so that the net amount of income, gain, loss, deduction and expense realized by each relevant party (after taking into account such special allocations) and the net capital account balances of the Partners (after taking into account such special allocations and adjustments) shall, as nearly as possible, be equal, respectively, to the amount of income, gain, loss, deduction and expense that would have been realized by each relevant party and the Current Account balances of the Partners that would have existed if such attribution and/or re-characterization and the application of this sentence of this Section had not occurred. Notwithstanding anything expressed or implied to the contrary in this Agreement, in the event the General Partner shall determine, in its discretion, that it is prudent to modify the manner in which the Current Accounts, or any debits or credits thereto, are computed in order to effectuate the intended economic sharing arrangement of the Partners, the General Partner may make such modification

### **ARTICLE 5 ALLOCATIONS AND ADVANCES OR DISTRIBUTIONS**

#### **5.1 Distributions and Order of Priority**

- (a) The General Partner, in its discretion, may determine and effect the distribution of Partnership property to the Partners, provided that distributions amongst all Partners shall be based on allocations set forth in Section 5.5(b).
- (b) Any distributions paid by the Partnership which cause its adjusted cost base to be negative and which would trigger a deemed capital gain under subsection 40(3.1) of the Tax Act are deemed to be an advance to Limited Partners during the then current Fiscal Year with a subsequent distribution being declared and paid immediately following the completion of such Fiscal Year.

- (c) The General Partner shall be entitled to withhold tax from any distribution as required by applicable laws.

## **5.2 Payments of Distributions**

Subject to this Section, distributions pursuant to this Article will be paid by cheque or wire transfer in lawful money of Canada. The transfer of such funds by the Partnership will be deemed to be payment of the distribution represented thereby.

The General Partner may, in its discretion, make distributions to the Partners in the form of securities or other property held by the Partnership. Any non-cash distribution shall be subject to such conditions and restrictions as the General Partner determines are required or advisable to ensure compliance with applicable law. In furtherance of the foregoing, the General Partner may require that the Limited Partner execute and deliver such documents as the General Partner may deem necessary or appropriate to ensure compliance with all securities laws that apply to such distribution and any further transfer of the distributed securities, and may appropriately legend the certificates that represent such securities to reflect any restriction on transfer with respect to such laws.

## **5.3 Repayment of Excess Distribution**

If, as determined by the General Partner, any Limited Partner has received a distribution which exceeds the entitlement of such Limited Partner, such Limited Partner must forthwith repay to the Partnership the amount thereof upon receipt of notice to such effect from the General Partner, and, if such amount is not immediately repaid, the General Partner may deduct such amount from any subsequent distribution otherwise required to be made to such Limited Partner.

## **5.4 Reinvestment**

For greater certainty, Section 5.1 is subject to the right of the Partners, by way of Extraordinary Resolution, to require the General Partner to reinvest Net Income and net proceeds from the sale of Partnership property in furtherance of the business of the Partnership described in Section 2.3.

## **5.5 Allocations of Income and Loss**

- (a) Net Income and Net Loss for accounting purposes shall be determined by the General Partner in accordance with GAAP, consistently applied, and all such determinations shall be binding on the Limited Partner. The General Partner shall have the right to adopt a different method of accounting than specified.
- (b) Net Income and Net Loss shall be allocated between the General Partner and the Limited Partners at the end of the fiscal year as follows:
  - (i) 0.1% to the General Partner; and
  - (ii) 99.9% to the Limited Partners.
- (c) The General Partner shall have the right, in computing Taxable Income and Taxable Loss, to adopt different treatments of particular items and to make and revoke such elections on behalf of the Partnership and the Partners as the General Partner deems to be appropriate in order to comply with the provisions of any taxing legislation and reflect the terms of this Agreement.

- (d) Subject to the following sentence, Taxable Income and Taxable Loss, the Partnership's income or loss from a particular source or a source in a particular place and all capital gains and capital losses and all other amounts that may be allocated by the Partnership for tax purposes shall be allocated to the Partners at the end of the fiscal year in the same proportions as amounts are allocated to the Partners pursuant to Subsection 5.5(b). For tax and accounting purposes, amounts recognized as income, gains, losses, deductions or credits of the Partnership for income tax purposes in a Fiscal Year but not taken into account in Subsection 5.5(b) in such Fiscal Year shall be allocated for income tax purposes among the Partners on the basis on which they would be allocated pursuant to Subsection 5.5(b) as if such amounts were taken into account in computing net income or loss of the Partnership, and the allocation of income, loss, capital gains and capital losses and all other amounts for income tax purposes in subsequent Fiscal Years shall be made taking such prior allocations into account.

## **ARTICLE 6 COVENANTS OF THE PARTNERS**

### **6.1 Covenants of the General Partner**

The General Partner hereby covenants and agrees:

- (a) to maintain appropriate books of account and records relative to the operation of the Business and financial condition of the Partnership;
- (b) not to carry on any business other than the Business;
- (c) to give prompt notice to the Limited Partners upon the occurrence of any event, circumstance or matter which may reasonably be expected to have a material adverse effect on the financial condition of the Partnership;
- (d) to give to the Limited Partners prompt written notice of any material adverse change in the condition of the business, financial or otherwise, of the General Partner or the Partnership;
- (e) to give to the Limited Partners prompt written notice of all actions, suits, litigation or other proceeding commenced or threatened against the General Partner or the Partnership;
- (f) not amalgamate, consolidate, or merge with any other person, and not enter into any partnership or joint venture with any other person with the approval of the Partners by way of Extraordinary Resolution; and
- (g) to deliver and provide to the Limited Partners the following:
  - (i) a quarterly update, including customary operational and financial reporting; and
  - (ii) all other information and/or documentation that the Limited Partner may request, acting reasonably.

**ARTICLE 7  
POWERS, DUTIES AND OBLIGATIONS OF GENERAL PARTNER**

**7.1 Powers, Duties and Obligations**

The General Partner has:

- (a) unlimited liability for the debts, liabilities and obligations of the Partnership;
- (b) subject to the terms of this Agreement and to the Act, the full and exclusive right, power and authority to manage, control, administer and operate the undertaking, business and affairs of the Partnership and to make decisions regarding the undertaking, business and affairs of the Partnership; and
- (c) the full and exclusive right, power and authority to do any act, take any proceeding, make any decision and execute and deliver any instrument, deed, agreement or document necessary for or incidental to carrying out the business of the Partnership for and on behalf of and in the name of the Partnership.

Any action taken by the General Partner on behalf of the Partnership is deemed to be the act of the Partnership and binds the Partnership. A person in dealing with the General Partner acting on behalf of the Partnership is not required to inquire into the authority of the General Partner to bind the Partnership and is entitled to rely conclusively upon the power and authority of the General Partner as set out in this Agreement.

**7.2 Specific Powers and Duties**

Without limiting the generality of the foregoing, the General Partner will have, subject to this Agreement, full power and authority for and on behalf of, and in the name of, the Partnership to:

- (a) enter into any agreement on behalf of the Partnership;
- (b) acquire property, both real and personal, of any description;
- (c) borrow money from time to time, to draw, make, execute and issue promissory notes, evidences of notes, evidences of indebtedness and other negotiable or non-negotiable instruments and to secure the payment thereof by mortgage, charge, debenture, hypothecation, pledge or by the creation of any other appropriate security interest;
- (d) employ all persons necessary for the conduct of the business of the Partnership;
- (e) retain such legal counsel, experts, advisors or consultants as the General Partner considers appropriate, including any of the same as the General Partner, in its discretion, determines to engage on behalf of Limited Partners in the representation of Limited Partner with respect to any adverse position taken by Canada Revenue Agency, and to rely upon the advice of such persons;
- (f) pay management and/or performance fees to any person, which may include the General Partner, deemed in the discretion of the General Partner to be necessary or desirable with respect to the business of the Partnership;
- (g) open and operate any bank account;



- (h) accept subscriptions from persons wanting to be admitted to the Partnership as Limited Partner in accordance with this Agreement and to admit such persons as Limited Partner by entering such person's name in the record of the Partnership;
- (i) pay all costs and expenses of the Partnership;
- (j) in its discretion, invest or not to invest, as the case may be, funds not immediately required for the business of the Partnership or for distribution to Limited Partner in short-term securities, including money market mutual funds of, or guaranteed by, the Government of Canada, the government of any Canadian province, or a Canadian chartered bank, credit union or trust company;
- (k) commence or defend any action or proceeding in connection with the Partnership;
- (l) file any elections, returns or other documents (including income tax elections, returns or designations) required by any governmental or like authority or reasonably considered necessary or appropriate by the General Partner;
- (m) obtain any insurance coverage deemed, in the discretion of the General Partner, necessary or desirable with respect to the Partnership's activities;
- (n) establish such reserves as the General Partner considers necessary for contingent liabilities;
- (o) do anything that is provided for in this Agreement or that is in furtherance of or is incidental to or is necessary or desirable in respect of the business of the Partnership; and
- (p) contract with any person or entity to carry out any of the duties of the General Partner hereunder and may delegate to such person or entity any power and authority of the General Partner hereunder; provided, however, that any such delegation will not release the General Partner from any of its obligations hereunder or from any liability for the non-performance thereof.

### **7.3 Title to Property**

The General Partner may hold legal title to any of the assets or property of the Partnership in its name as bare trustee for the benefit of the Partnership.

### **7.4 Costs**

The General Partner will be reimbursed by the Partnership for its reasonable out-of-pocket costs incurred in the performance of its obligations under this Agreement.

### **7.5 Exercise of Duties**

The General Partner covenants that it will exercise the powers and discharge its duties under this Agreement honestly, in good faith, and in the best interests of the Partnership, and that it will exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. The General Partner covenants that it will maintain the confidentiality of financial and other information and data which it may obtain through or on behalf of the Partnership, the disclosure of which may adversely affect the interests of the Partnership or of a Limited Partner, except to the extent

that disclosure is required by law or is in the best interests of the Partnership, and it will utilize the confidential information and data only for the business of the Partnership.

#### **7.6 Transactions Involving Affiliates or Associates**

The validity of a transaction, agreement or payment involving the Partnership and an Affiliate or Associate of the General Partner will not be affected by reason of the relationship between the General Partner and the Affiliate or Associate, provided that, if the Partnership is to reimburse the General Partner for the cost and expenses thereof, those costs and expenses will be reasonable and competitive with the costs and expenses charged by independent third parties. Any or all of the directors and officers of the General Partner may be officers or directors of or otherwise interested in or related to the Affiliates or Associates and the General Partner will not be prevented from approving and implementing any transaction, agreement or payment by reason of the common directors or officers.

#### **7.7 Limitation of Liability**

Subject to Section 2.12, the General Partner is not personally liable for the return of any Capital Contribution made by a Limited Partner to the Partnership, and neither the General Partner nor its officers, directors, shareholders, employees or agents are liable, responsible for or accountable in damages or otherwise to the Partnership or a Limited Partner for an action taken or a failure to act on behalf of the Partnership within the scope of the authority conferred on the General Partner by this Agreement or by law, unless the act or omission was performed or omitted fraudulently or in bad faith or constituted wilful misfeasance or gross negligence in the performance of their obligations or the reckless disregard of such obligations.

#### **7.8 Indemnification of the General Partner**

The Partnership hereby agrees to indemnify and hold the General Partner, its officers, directors, shareholders, employees or agents harmless from and against any and all losses, expenses, liabilities and damages by reason of acts, omissions or alleged acts or omissions arising out of the activities of the General Partner on behalf of the Partnership or in furtherance of the interests of the Partnership, so long as the acts, omissions or the acts or omissions on which the actual or threatened action, proceeding or claim are based were not performed or omitted in bad faith and were not attributable to the wilful misfeasance, bad faith or gross negligence in the performance of the obligations or in reckless disregard of such obligations of the General Partner, its officers, directors, shareholders, employees or agents.

#### **7.9 Conflict of Interest**

The Limited Partners acknowledge that directors, officers and shareholders of the General Partner currently have varied business interests and as such may be, and are permitted to be, engaged in and may act as partner, agent or in any other capacity for other funds or partnerships and may act as a partner, director, officer or shareholder in other ventures or entities related, directly or indirectly, to the Partnership's business, activities or assets, whether or not the Partnership has an interest therein and may hold securities or other interests in various entities, including those in which the Partnership has an interest.

#### **7.10 Other Matters Concerning the General Partner**

- (a) The General Partner may rely and will be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request,

consent, order, bond, debenture, or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties.

- (b) The General Partner may consult with legal counsel, accountants, appraisers, management consultants, investment bankers and other consultants and advisors selected by it, and any act taken or omitted in reliance upon the opinion (including, without limitation, an opinion of counsel) of any of those persons as to matters that the General Partner reasonably believes to be within that person's professional or expert competence will be conclusively presumed to have been done or omitted in good faith and in accordance with that opinion.
- (c) The General Partner has the right, in respect of any of its power, authority or obligations under this Agreement, to act through any of its duly authorized officers.
- (d) Any standard of care or duty imposed under the Act or any applicable law will be modified, waived or limited as required to permit the General Partner to act under this Agreement or any other agreement contemplated by this Agreement and to make any decision pursuant to the power of authority prescribed in this Agreement, so long as that action is reasonably believed by the General Partner, acting in good faith, to be in, or not opposed to, the best interest of the Partnership.

#### **7.11 Power of Attorney**

Upon execution of this Agreement by a Limited Partner specifically named herein, or upon the delivery of a Subscription Form by a Limited Partner, each Limited Partner hereby irrevocably nominates, constitutes and appoints the General Partner, with full power of substitution, as agent and true and lawful attorney to act for and on behalf of such Limited Partner with full power and authority in the name, place and stead of such Limited Partner to:

- (a) execute (under seal or otherwise and as the context requires), swear to, acknowledge, deliver and record or file as and where required:
  - (i) this Agreement and any amendment to this Agreement, if made in accordance with Section 11.1 or 11.2 herein, the certificate, any declaration, declaration of change, or form or any amendment thereto and any other instrument required to form, qualify, continue and keep in good standing the Partnership as a limited partnership under the laws of the Province of Ontario, or otherwise to comply with the laws of any jurisdiction in which the Partnership may carry on business or own, lease or have property in order to maintain the limited liability of the Limited Partner and to comply with the applicable laws of such jurisdiction;
  - (ii) any instrument, declaration, conveyance or certificate necessary to reflect, from time to time, any amendment to this Agreement, if made in accordance with Section 11.1 or 11.2 herein;
  - (iii) any instrument, declaration, conveyance or certificate required in connection with the dissolution or termination of the Partnership that has been approved by the Partners by way of Extraordinary Resolution;
  - (iv) any instrument required in connection with any election relating to the Partnership that may be made under the Tax Act or analogous federal or

- provincial fiscal legislation deemed necessary or desirable to carry out the provisions of this Agreement;
- (v) any document required to be filed with the appropriate governmental body, agency or authority in connection with the business, property, assets and undertaking of the Partnership;
  - (vi) any document on behalf of and in the name of the Partnership as may be necessary to give effect to the business of the Partnership;
  - (vii) any document on behalf of and in the name of a Limited Partner as may be necessary to reflect the assignment of a Unit;
  - (viii) any other instrument or document on behalf of and in the name of the Partnership, including without limitation, all debt instruments, as may be deemed necessary by the General Partner to carry out this Agreement fully in accordance with its terms; and
- (b) act as its representative at the relevant closing of the offering of Units, to release the funds representing the subscription price for the Units, to execute or complete on its behalf all closing receipts and documents as required or deemed necessary, to receive on its behalf Unit Certificates subscribed for pursuant to the applicable Subscription Form, and to complete or correct errors or omissions in any form or document provided by the Limited Partner; and
  - (c) invest the assets of the Partnership as the General Partner deems appropriate.

To evidence the foregoing, each Limited Partner, in such form or forms as may be approved from time to time by the General Partner, or in executing this Agreement, has executed or will execute, as the case may be, a power of attorney containing the powers set forth above.

The Power of Attorney once granted, is irrevocable and will be a power coupled with an interest and, to the extent permitted by law, is binding upon the estate of the Limited Partner and will be exercisable during any subsequent legal incapacity of a Limited Partner, will survive the assignment by the Limited Partner of the whole or any part of the interest of such Limited Partner in the Partnership, extends to and is binding upon the heirs, executors, administrators and other legal representatives and the successors and assigns of such Limited Partner and may be exercised by the General Partner for and on behalf of each Limited Partner in executing any instrument with a single signature as attorney and agent for each of the Limited Partner and all of them.

Each Limited Partner agrees to be bound by any representation or action made or taken by the General Partner pursuant to such Power of Attorney and hereby waives any and all defences which may be available to contest, negate or disaffirm the action of the General Partner within such Power of Attorney.

#### **7.12 Restrictions upon the General Partner**

The General Partner's power and authority does not extend to any powers, actions or authority enumerated in Section 9.18 unless and until the requisite Extraordinary Resolution is passed by the Partners. The General Partner will not, without approval from the Limited Partners by way of Extraordinary Resolution:

- (a) commingle the funds of the Partnership with the funds of the General Partner or any of its Affiliates or Associates or with the funds of any other person;
- (b) reinvest Net Income and net proceeds from the sale of Partnership property rather than making distributions to Limited Partners;
- (c) dissolve the Partnership; or
- (d) assign, transfer or otherwise dispose of its entire interest as General Partner without approval of the Limited Partner.

### **7.13 Removal of General Partner**

The General Partner will be removed as the General Partner as follows:

- (a) Upon the bankruptcy, dissolution, liquidation or winding-up or making of an assignment for the benefit of creditors of the General Partner, or upon the appointment of a receiver of the assets and undertaking of the General Partner, the General Partner will be deemed to have been removed as the general partner of the Partnership and a new general partner will, in such instances, be appointed by the Limited Partner by an Ordinary Resolution within 180 days of receipt of written notice of that event (which written notice would be provided by the General Partner promptly upon the occurrence of that event) provided that the General Partner will not cease to be the General Partner until the earlier of the appointment of a new General Partner and the expiry of the 180 day period.
- (b) The Limited Partners may remove the General Partner if the General Partner has committed a material breach of this Agreement, which continues for a period of 90 days after written notice is given to the General Partner of that breach, and substitute another as the General Partner in its stead by an Extraordinary Resolution, but only if the Limited Partners appoint, concurrently with the removal, a replacement General Partner that assumes all the responsibilities and obligations of the removed General Partner under this Agreement.

### **7.14 Voluntary Change to a General Partner**

The General Partner may transfer its interest as a General Partner of the Partnership, provided that the proposed new General Partner has been approved by Extraordinary Resolution and the General Partner transfers its interest in the Partnership to the new General Partner in consideration for the payment of \$100. The General Partner is bound by the terms of this Agreement until the transfer of its interest as general partner has been approved by an Extraordinary Resolution and the new General Partner has agreed in writing to be bound by the agreements, representations and warranties contained on the part of the General Partner as General Partner under this Agreement.

## **ARTICLE 8 FINANCIAL INFORMATION**

### **8.1 Books and Records**

The General Partner will keep or cause to be kept proper books of account and records of the Partnership.

## **8.2 Annual Report**

The General Partner will send or cause to be sent to each Limited Partners within 90 days of the end of each Fiscal Year of the Partnership Auditor's reviewed financial statements of the Partnership containing: (a) a balance sheet for the Partnership as at the end of the most recently completed Fiscal Year; (b) an income or loss statement for such Fiscal Year; (c) a statement of changes in financial position for that Fiscal Year; (d) a statement of changes in such Partner's Capital Account for that Fiscal Year; (e) the Auditor's review engagement report on such financial statements of the Partnership; and (f) such other information as in the reasonable opinion of the General Partner is material to the operations of the Partnership. Such financial statements will include comparative financial statements for the immediately preceding Fiscal Year (if any) prior to the Fiscal Year reported on in the financial statements.

## **8.3 Quarterly Report**

The General Partner will send or cause to be sent to each Limited Partner within 45 days of the end of each fiscal quarter of the Partnership, unaudited financial statements containing: (a) an unaudited balance sheet for the Partnership as at the end of the most recently completed fiscal quarter; (b) an unaudited income or loss statement for that fiscal quarter; (c) an unaudited statement of changes in financial position for that fiscal quarter; and (d) such other information as in the reasonable opinion of the General Partner is material to the operations of the Partnership.

## **8.4 Income Tax Information**

The General Partner will send or cause to be sent to each person who was a Limited Partner:

- (a) on the last day of the Fiscal Year; or
- (b) at the date of dissolution of the Partnership,

by, in the case of (a) above, the 31<sup>st</sup> day of March of the following year, or in the case of (b) above, within 90 days of dissolution, as the case may be, or within any other shorter period as may be required by applicable law, all information, in suitable form, relating to the Partnership necessary for a person to prepare that person's Canadian federal and provincial income tax returns. The General Partner will file, on behalf of itself and the Limited Partners, annual Partnership information returns and any other information returns required to be filed under the Tax Act and any other applicable tax legislation in respect of the Partnership.

## **8.5 Accounting Policies**

The General Partner is authorized to establish from time to time accounting policies with respect to the financial statements of the Partnership and to change from time to time any policy that has been so established so long as those policies are consistent with the provisions of this Agreement and with GAAP.

## **8.6 Appointment of Auditor**

The General Partner will, on behalf of the Partnership, select the Auditor on behalf of the Partnership to review and report to the Partners upon the financial statements of the Partnership for, and as at the end of each Fiscal Year, and to advise upon and make determinations with regard to financial questions relating to the Partnership or required by this Agreement to be determined by the Auditor.

**ARTICLE 9  
MEETINGS OF THE LIMITED PARTNER**

**9.1 Meetings of Partners**

The General Partner may call a meeting of Partners at any time for such purposes as the General Partner sees fit. Where the Limited Partner gives the General Partner written notice requesting a meeting of the Limited Partners (the "Requisitioning Partner"), the General Partner will, within 30 days of receipt of the notice, give notice calling a meeting of the Partners. If the General Partner fails to do so, the Requisitioning Partner may call a meeting of the Partners by giving notice to the Partners in accordance with this Agreement. Every meeting, however called, will be conducted in accordance with this Agreement.

**9.2 Place of Meeting**

Every meeting will be held in Wilsonville, Ontario or at such other place in Canada as may be approved by Extraordinary Resolution or as determined by the General Partner.

**9.3 Notice of Meeting**

Notice of any meeting will be given to each Partner by prepaid registered mail or by personal delivery not less than 10 days prior to such meeting, and will state: (a) the time, date and place of such meeting; and (b) in general terms, the nature of the business to be transacted at the meeting.

**9.4 Notice of Meeting/Adjournment**

Notice of an adjournment of a meeting of Partners need not be given if the adjourned meeting is held within 14 days of the original meeting. Otherwise, notice of an adjournment of a meeting will be given not less than 10 days in advance of the adjournment of the meeting and otherwise in accordance with this section, except that the notice need not specify the nature of the business to be transacted if unchanged from the original meeting.

**9.5 Accidental Omissions**

Accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any Limited Partner (but not the General Partner) will not invalidate the proceedings at that meeting.

**9.6 Proxies**

Any Partner entitled to vote at a meeting may vote by proxy if the proxy has been received by the General Partner no later than the close of business on the day prior to the day of the meeting or if the proxy has been received by the chair of the meeting for verification prior to the meeting.

**9.7 Validity of Proxies**

A proxy purporting to be executed by or on behalf of a Partner and completed in accordance herewith will be considered to be valid unless challenged at the time of or prior to its exercise. The person challenging the proxy will have the burden of proving to the satisfaction of the chairman of the meeting that the proxy is invalid and any decision of the chairman concerning the validity of a proxy will be final. A proxy holder need not be a holder of a Unit.

### 9.8 Form of Proxy

Every proxy will be substantially in the form which follows or such other form as may be approved by the General Partner or as may be satisfactory to the chairman of the meeting at which it is sought to be exercised:

"I, \_\_\_\_\_, of \_\_\_\_\_, being a Partner of Original Traders Energy LP, hereby appoint \_\_\_\_\_ of \_\_\_\_\_, as my proxy, with full power of substitution, to vote for me and on my behalf at the meeting of Limited Partner to be held on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and every adjournment thereof and every poll that may take place in consequence thereof.

Dated: \_\_\_\_\_

### 9.9 Corporations

A Partner which is a corporation may appoint an officer, director or other authorized person as its representative to attend, vote and act on its behalf at a meeting of Partners.

### 9.10 Attendance of Others

Any officer or director of the General Partner, legal counsel for the General Partner and the Partnership and representatives of the Auditor will be entitled to attend any meeting of Limited Partner. The General Partner has the right to authorize the presence of any person at a meeting of Limited Partner regardless of whether the person is a Partner. With the approval of the General Partner, that person is entitled to address the meeting.

### 9.11 Chair

The General Partner may nominate a person (who need not be a Limited Partner) to be chair (the "Chair") of a meeting of Partners and the person nominated by the General Partner will be chairperson of such meeting unless the Partners elect another chairperson by Ordinary Resolution.

### 9.12 Quorum

Subject to this Agreement, a quorum at any meeting of Limited Partners will consist of two or more persons present in person who collectively hold or represent by proxy not less than 60% of the outstanding Units and who are entitled to vote on any resolution and a quorum for any specific resolution presented to the meeting shall be two or more persons present who hold or represent by proxy not less than 60% of the outstanding Units entitled to vote on such resolution. If, within half an hour after the time fixed for the holding of such meeting, a quorum for the meeting is not present, the meeting:

- (a) if called by or on the requisition of the Limited Partners, will be terminated; and
- (b) if called by the General Partner, will be held at the same time and, if available, the same place not less than ten days or more than 21 days later (or if that date is not a business day, the first business day after that date), and the General Partner will provide notice, if any, in accordance with Section 9.4. At such reconvened meeting the quorum for the meeting and the quorum for any specific resolution to be passed at such meeting will



consist of the Limited Partners then present in person or represented by proxy at such reconvened meeting.

### **9.13 Voting Rights of General Partner**

The General Partner, as such, may not vote at any meeting of Limited Partners. Such General Partner, if also a holder of Unit(s) of the Partnership, may, however, vote as a Limited Partner.

### **9.14 Voting**

- (a) Every question submitted to a meeting of Limited Partners will be decided on a show of hands. The Chair of the meeting of Limited Partners will be entitled to vote in respect of Units held by the Chair or represented by the Chair by proxy and, in the case of an equality of votes, the Chair of the meeting will have a casting vote. On any vote at a meeting of Limited Partners, a declaration by the Chair of the meeting concerning the result of the vote will be conclusive.
- (b) Any Limited Partner who is a party to a contract or proposed contract or who has a material interest in a contract, proposed contract or transaction (either directly or indirectly, including through an Affiliate or Associate which is the subject matter of a resolution) shall not be entitled to any vote on such resolution; provided however, that a Limited Partner shall be deemed not to have a material interest in a contract, proposed contract or transaction if the interest arises merely from the ownership of Units where the Limited Partner will have or receive no extra or special benefit or advantage not shared on an equal basis by all other Limited Partners.

### **9.15 Poll**

A poll requested or required concerning the election of a Chair or an adjournment will be taken immediately on request. A poll requested or required concerning any other matter will be taken at the meeting or an adjournment of the meeting in such manner as the Chair directs.

### **9.16 Resolution in Writing**

A written resolution signed by Limited Partners holding the requisite number of Units to qualify the resolution as an Ordinary Resolution or an Extraordinary Resolution, as the case may be, has the same effect as if it had been passed at a meeting of Limited Partners and is deemed to satisfy all of the requirements of this Agreement relating to meetings of Limited Partners, provided that no such resolution(s) shall be valid or effective unless written notice of the proposed resolution(s) has been provided to all of the Limited Partners at least forty-eight (48) hours prior to the resolution(s) having effect.

### **9.17 Powers of Limited Partner; Resolutions Binding**

The Limited Partners will have only the powers set forth in this Agreement and any additional powers provided by law. Subject to the foregoing sentence, any resolution of the Partners passed in accordance with this Agreement will be binding on all the Partners and their respective heirs, executors, administrators, successors and assigns, whether or not any such Partner was present in person or voted against any resolution so passed.

### **9.18 Powers Exercisable by Extraordinary Resolution**

The following powers will only be exercisable by Extraordinary Resolution passed by the Partners:

- (a) dissolving the Partnership, except as otherwise provided for under Section 10.1(a);
- (b) removing the General Partner and electing a new General Partner as provided in Subsection 7.13(b);
- (c) waiving any default on the part of the General Partner on such terms as the Partners may determine;
- (d) continuing the Partnership in the event that the Partnership is terminated by operation of law;
- (e) changing the Fiscal Year of the Partnership;
- (f) amending, modifying, altering or repealing any Extraordinary Resolution previously passed by the Partners;
- (g) amending this Agreement pursuant to Section 11.1 in accordance with the provisions thereof; and
- (h) purchasing or otherwise acquiring any other business.

### **9.19 Minutes**

The General Partner will cause minutes to be kept of all proceedings and resolutions at every meeting of the Partners and will cause all such minutes and all resolutions of the Partners consented to in writing to be made and entered in books to be kept for that purpose. Any minutes of a meeting signed by Limited Partners holding more than two-thirds (2/3rds) of the Units will be deemed evidence of the matters stated in them and such meeting will be deemed to have been duly convened and held and all resolutions and proceedings shown in them will be deemed to have been duly passed and taken.

### **9.20 Additional Rules and Procedures**

To the extent that the rules and procedures for the conduct of a meeting of the Partners are not prescribed in this Agreement, the rules and procedures will be determined by the chairman of the meeting.

## **ARTICLE 10 DISSOLUTION AND LIQUIDATION**

### **10.1 Dissolution**

The Partnership will be dissolved upon the occurrence of any of the following events:

- (a) 99 years from the date the Declaration was filed, subject to extension by the passage of an Extraordinary Resolution approving the extension;
- (b) the bankruptcy, dissolution, liquidation or winding-up, or making of an assignment for the benefit of creditors, of the General Partner during the term of this Agreement, unless the General Partner is replaced as provided in subsection 7.13(a); and

- (c) the passage of an Extraordinary Resolution approving the dissolution of the Partnership.

## **10.2 Liquidation of the Partnership**

In the event of the dissolution of the Partnership for any reason, the General Partner, or in the event that the General Partner is bankrupt, a receiver appointed by an Extraordinary Resolution, will commence to wind up the affairs of the Partnership and to liquidate its assets. The Partners will continue to share net income, net loss, taxable income and tax loss during the period of liquidation in the same proportions as before the dissolution. The General Partner or receiver has the full right and discretion to determine the time, manner and terms of any sale of assets of the Partnership pursuant to the liquidation, having regard to the nature and condition of the assets of the Partnership.

## **10.3 Distribution**

Following the payment of all debts and liabilities of the Partnership and all expenses of liquidation, but conditional upon the right of the General Partner or receiver to set up such cash reserves as it may deem necessary for any contingent or unforeseen liabilities or obligations of the Partnership, the balance of the proceeds of the liquidation and the other funds of the Partnership will be distributed to the holders of the Units in accordance with Section 3.2(d).

## **10.4 Statement**

Within a reasonable time following the completion of the liquidation of the Partnership, the General Partner will supply to each of the Limited Partner a statement, reviewed by the Auditor, setting out the assets and liabilities of the Partnership as of the date of complete liquidation and the distribution to each Partner.

## **10.5 Cash Distribution**

Unless authorized by the Partners by Extraordinary Resolution, no Partner has the right to demand or receive property other than cash upon dissolution and termination of the Partnership.

## **10.6 Termination**

Upon the completion of the liquidation of the Partnership and the distribution of all of the Partnership funds, the Partnership will terminate and the General Partner has the authority to execute and record any declarations, certificates, instruments and documents required to effect the dissolution or termination of the Partnership.

## **10.7 Continuity**

Except as specifically set forth in this Agreement, the Partnership will continue and will not dissolve or terminate upon the occurrence of any event, including the admission of a new or additional General Partner or Limited Partner or by the withdrawal, removal, death, insolvency, bankruptcy or other disability of a Partner.

## **10.8 Receiver**

Subject to Section 10.2, the General Partner will be the receiver of the Partnership charged with the responsibility of liquidating the Partnership upon its dissolution. If the General Partner is unable or unwilling to act in that capacity, then the Limited Partners will appoint by Extraordinary Resolution

another appropriate person to act as the receiver of the Partnership. The receiver will proceed diligently to wind up the affairs of the Partnership and to distribute the net proceeds from the sale of the assets of the Partnership. During the course of the liquidation, the receiver will operate the properties and undertaking of the Partnership and in doing so is vested with all the powers and authority of the General Partner in relation to the Partnership under the terms of this Agreement. The Partnership will pay to the receiver its reasonable fees and disbursements incurred in carrying out its duties.

#### **10.9 No Right to Dissolve**

Except as provided for in this Article 10, no Limited Partner has the right to ask for the dissolution of the Partnership, for the winding up of its affairs or for the distribution of its assets.

#### **10.10 Return of Limited Partner's Contribution**

A Limited Partner has the right to demand and receive the return of the Limited Partner's Capital Contribution upon the earlier of:

- (a) the dissolution of the Partnership; and
- (b) when the Partners consent to the return of the Capital Contribution by way of Extraordinary Resolution.

### **ARTICLE 11 AMENDMENT**

#### **11.1 General**

Except as otherwise set out in this Article 11, this Agreement may be amended by an Extraordinary Resolution approving the amendment; provided, however, that no such amendment that adversely affects the rights of the General Partner (other than a resolution relating to the removal of the General Partner and the appointment of a new general partner) may be made without the approval of the General Partner.

#### **11.2 Amendment by the General Partner**

The General Partner may, without prior notice to or consent from any Limited Partner, amend the provisions of this Agreement from time to time:

- (a) for the purpose of reflecting the admission, substitution, withdrawal or removal of Limited Partner in accordance with this Agreement;
- (b) to change the location of the principal place of business or the registered office of the Partnership;
- (c) for the purpose of making a change that, in the discretion of the General Partner is reasonable and necessary or appropriate to enable Partners to take advantage of, or not to be detrimentally affected by, changes in the Tax Act or other taxation laws;
- (d) to cure an ambiguity or to correct or supplement a provision of this Agreement which, in the opinion of counsel to the Partnership, may be defective or inconsistent with any other provision of this Agreement, but only if in the opinion of counsel the cure, correction or supplemental provision does not materially adversely affect the interests of any Limited Partner; or

- (e) for the purpose of protecting the Limited Partners,

The Limited Partners will be notified of any amendment to this Agreement under this Section within 30 days after the effective date of the amendment.

### **11.3 Limitations on Amendment**

This Agreement may not be amended without the unanimous approval of all the Limited Partners if the effect of the amendment is to:

- (a) alter the ability of the Limited Partners to remove the General Partner without the consent of the General Partner;
- (b) change the liability of a Limited Partners;
- (c) allow a Limited Partner to exercise control of the business or take part in the management of the Partnership;
- (d) reduced the interest in the Partnership of the Limited Partners;
- (e) change the Partnership from a limited partnership to a general partnership;
- (f) limit the right of a Limited Partner to vote at any meeting of the Limited Partners; or
- (g) amend this Section 11.3 or Section 9.18.

## **ARTICLE 12 NOTICES**

### **12.1 Notices**

A notice, demand, request, statement or other evidence required or permitted to be given under this Agreement must be written. It will be sufficiently given:

- (a) if delivered personally or by courier, or sent by prepaid registered mail, to a party addressed as follows:
  - (i) if to the General Partner, at the registered office of the Partnership, at 7331 Indian Line Road, Wilsonville, ON N0E 1Z0; and
  - (ii) if to a Limited Partner, to such Limited Partner at its last address as shown in the records of the Partnership,

and any such notice will be deemed to have been received 5 business days after mailing, or if delivered, when delivered. If the notice is mailed and there occurs between the time of mailing and the actual or deemed receipt of the notice, a mail strike, slowdown or other labour dispute that might affect delivery of the notice, then the notice is effective only if actually received; or

- (b) if delivered by e-mail, to a party addressed as follows:
  - (i) if to the General Partner at 7331 Indian Line Rd Wilsonville, Ontario; and

- (ii) if to a Limited Partner, to such Limited Partner at its last email address shown in the records of the Partnership,

and any such notice will be deemed to have been received upon receipt by the sending party of an email reply confirmation.

## **ARTICLE 13 GENERAL**

### **13.1 Binding Agreement**

Subject to the restrictions on assignment and transfer herein contained, this Agreement will enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators and other legal representatives, successors and assigns.

### **13.2 Time**

Time will be of the essence hereof.

### **13.3 Severability**

Each provision of this Agreement is intended to be severable. If any provision of this Agreement, or the application of such provision to any person or circumstance, is inapplicable for any reason, the remainder of this Agreement, or the application of such provision to any person or circumstance other than those to which it is inapplicable, will not be affected thereby.

### **13.4 Governing Law**

This Agreement will be governed and construed according to the laws of the Province of Ontario, without giving effect to the principles thereof relating to the conflict of laws and the parties hereto irrevocably attorn to the jurisdiction of the courts thereof.

### **13.5 Further Documents**

The parties will do such things and execute and deliver such documents as counsel to the Partnership considers necessary or desirable to carry out the terms and intent of this Agreement.

### **13.6 Successors and Assigns**

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators and other legal representatives and, to the extent permitted hereunder, their successors and assigns.

### **13.7 Entire Agreement**

This Agreement constitutes the entire agreement among the parties to this Agreement with respect to the subject matter of this Agreement.

### **13.8 Limited Partner Not a General Partner**

If any provisions of this Agreement has the effect of imposing upon any Limited Partner any of the liabilities or obligations of a general partner under the Act, that provision will be of no force and effect.

### **13.9 Counterparts**


This Agreement, or any amendment to it, may be executed in multiple counterparts, each of which will be deemed an original agreement, and all of which will constitute one agreement. This Agreement may also be executed and adopted in any subscription form or similar instrument signed by a Limited Partner with the same effect as if such Limited Partner had executed a counterpart of this Agreement. All counterparts and adopting instruments will be construed together and will constitute one and the same agreement.

*[Remainder of this page intentionally left blank; signature page follows.]*

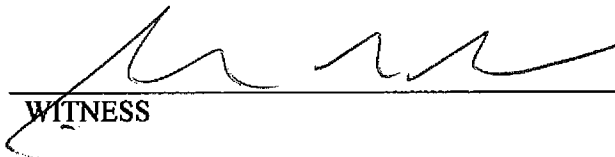
**IN WITNESS OF WHICH** the parties hereto have executed this Agreement.

General Partner:

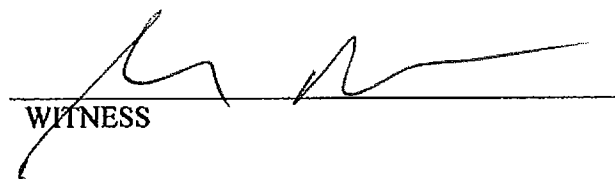
**ORIGINAL TRADERS ENERGY LTD.**


Per:   
Miles Hill  
President

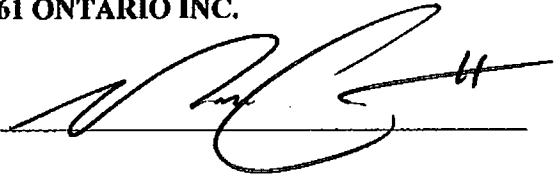
Limited Partners:

  
WITNESS

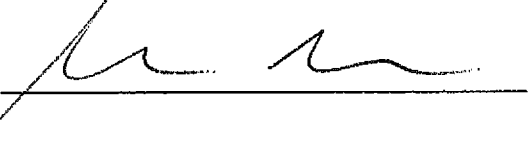
  
MILES HILL

  
WITNESS

  
SCOTT HILL  
2584861 ONTARIO INC.

Per:   
2590086 ONTARIO LTD.

Per:   
IMA ENTERPRISES INC.

Per: 



**SCHEDULE "A"**

**INITIAL CAPITAL CONTRIBUTIONS AND UNIT SUBSCRIPTIONS OF THE LIMITED PARTNERS**

In accordance with Section 4.7 of this Agreement, the Limited Partners agree to contribute capital to and subscribe for Units of the Partnership as follows:

NAME OF LIMITED PARTNER	NUMBER OF UNITS	PERCENTAGE OF UNITS	CAPITAL CONTRIBUTION
Miles Hill	260,000	26%	\$260,000
Scott Hill	260,000	26%	\$260,000
2584861 Ontario Inc.	275,000	27.5%	\$275,000
2590086 Ontario Ltd.	185,000	18.5%	\$185,000
IMA Enterprises Inc.	20,000	2%	\$20,000

**SCHEDULE "B"**  
**LIMITED PARTNERSHIP REPORT**

See attached.



Ministry of Government and  
Consumer Services

## Profile Report

ORIGINAL TRADERS ENERGY LP as of October 20, 2021

Act	Limited Partnerships Act
Type	Ontario Limited Partnership
Firm Name	ORIGINAL TRADERS ENERGY LP
Business Identification Number (BIN)	270936834
Declaration Status	Active
Declaration Date	August 30, 2017
Expiry Date	August 29, 2022
Principal Place of Business	1110 Brant Hwy 54, Unit 3, Caledonia, Ontario, Canada, N3W 2G9
Activity (NAICS Code)	[Not Provided] - [Not Provided]

Certified a true copy of the record of the Ministry of Government and Consumer Services.

*Barbara Duckitt*

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.

**General Partners**

**Number of General Partners**

1

**Partners**

**Partner 1**

**Name**

ORIGINAL TRADERS ENERGY LTD.

**Business Identification Number (BIN)**

2585997

**Entity Type**

Ontario Business Corporation

**Principal Place of Business**

7331 Indian Line Road, Wilsonville, Ontario, Canada, N0E  
1Z0

Certified a true copy of the record of the Ministry of Government and Consumer Services.

*Barbara Duckitt*

Director/Registrar

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Additional historical information may exist in paper or microfiche format.

**Firm Name History**  
**Name**  
**Effective Date**

ORIGINAL TRADERS ENERGY LP  
August 30, 2017

Certified a true copy of the record of the Ministry of Government and Consumer Services.

*Barbara Duckitt*

Director/Registrar

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**Active Business Names**

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

Certified a true copy of the record of the Ministry of Government and Consumer Services.

*Barbara Duckitt*

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.

**Expired or Cancelled Business Names**

This entity does not have any expired or cancelled business names registered under the Business Names Act in Ontario.

Certified a true copy of the record of the Ministry of Government and Consumer Services.

*Barbara Duckitt*

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.

**Document List**

<b>Filing-Name</b>	<b>Effective Date</b>
Declaration of Change to an Ontario Limited Partnership	January 10, 2018
LPA - File a Declaration of an Ontario Limited Partnership	August 30, 2017

Certified a true copy of the record of the Ministry of Government and Consumer Services.

*Barbara Duckitt*

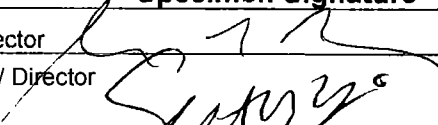
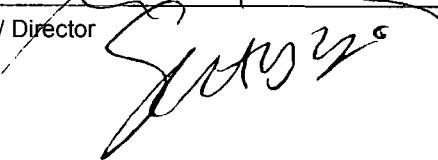
Director/Registrar

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.



**SCHEDULE "C"**  
**INCUMBENCY CERTIFICATE**

The duly elected or appointed directors and officers of the Borrower, as of the date of this Certificate:

<b>Name</b>	<b>Address</b>	<b>Office</b>	<b>Specimen Signature</b>
Glenn Page		President / Director	
Scott Hill		Vice-President / Director	

**SCHEDULE "D"**

**RESOLUTION**

See Attached

**RESOLUTIONS OF THE DIRECTORS  
OF  
ORIGINAL TRADERS ENERGY LTD.  
(the "Corporation")  
IN ITS CAPACITY AS GENERAL PARTNER OF  
ORIGINAL TRADERS ENERGY LIMITED PARTNERSHIP**

**WHEREAS:**

- A. The Corporation is the general partner of Original Traders Energy Limited Partnership
- B. Royal Bank of Canada ("**RBC**") has agreed to establish certain credit facilities in favour of Original Traders Energy Limited Partnership pursuant to a loan agreement dated July 8, 2021 between RBC, as lender, Original Traders Energy Limited Partnership, as borrower (as the same may be amended, modified, supplemented, extended, renewed, restated or replaced from time to time, the "**Credit Agreement**");
- C. Original Traders Energy Limited Partnership has agreed to execute and deliver security to RBC for the payment and performance of the obligations, present or future, direct or indirect, absolute or contingent, matured or unmatured, of the Borrower to RBC; and
- D. In accordance with the constating documents of Original Traders Energy Limited Partnership, Original Traders Energy Limited Partnership is authorized to borrow money upon the credit of Original Traders Energy Limited Partnership and to charge, mortgage, hypothecate, pledge, assign or otherwise create a security interest in its property and assets to secure its debt obligations.

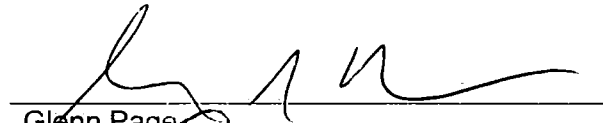
**NOW THEREFORE BE IT RESOLVED THAT:**

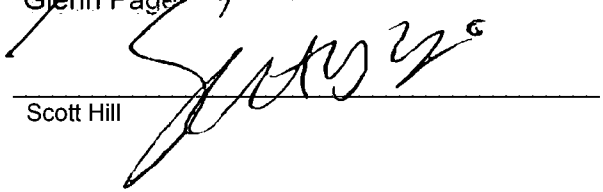
- 1. The Corporation, in its capacity as general partner of Original Traders Energy Limited Partnership, is hereby authorized and approved to negotiate, finalize, enter into, execute and deliver the Credit Agreement to RBC.
- 2. The Corporation, in its capacity as general partner of Original Traders Energy Limited Partnership, is hereby authorized to borrow from RBC on the terms and conditions set out in the Credit Agreement.
- 3. The Corporation, in its capacity as general partner of Original Traders Energy Limited Partnership, is hereby authorized and directed to negotiate, finalize enter into, execute and deliver to RBC the following as continuing security for the due payment and performance of all present and future debts, obligations and liabilities of the Borrower to RBC (collectively, the "**Loan Documents**"):
  - (a) Master Lease Agreement between RBC, as lessor, and Original Traders Energy Limited Partnership, as lessee; and
  - (b) such other loan, security and other documents as RBC may require from time to time in accordance with the terms and conditions of the Credit Agreement or the documents described above.

4. Any one officer or director of the Corporation, acting alone, is authorized for and on behalf of the Corporation, in its capacity as general partner of Original Traders Energy Limited Partnership, to execute, under the corporate seal of the Corporation or otherwise, and deliver to RBC the Credit Agreement and the Credit Documents with such alterations, additions, amendments and deletions as may be approved by such person executing the same, whose signature shall be conclusive evidence of such authorization.
5. Any one director or officer of the Corporation, acting alone, is hereby authorized and directed to take all such actions and to execute all such documents, instruments and agreements, whether under the corporate seal of the Corporation or otherwise, as such person may in his or her absolute discretion determine to be necessary or desirable to carry out the foregoing provisions of this resolution, the completion of all such acts and things and the execution of all such documents, instruments and agreements in accordance with this paragraph being conclusive evidence of such determination.
6. Any and all actions by the Corporation, in its capacity as general partner of Original Traders Energy Limited Partnership, the Borrower and any director or officer of the Corporation, in its capacity as general partner of the Borrower, taken prior to the adoption of the foregoing resolutions and for the purposes described in the foregoing resolutions, and any and all actions taken heretofore in connection with the Credit Agreement and the Loan Documents, are hereby approved, ratified, adopted and confirmed in all respects.
7. The execution and delivery of all existing security and mortgages granted by the Corporation in favour of RBC, regardless of the officer or director of the Corporation who executed such agreement, document or instrument, and regardless of any informality in such execution or delivery, is hereby ratified, approved and confirmed in all respects.
8. This resolution may be executed in any number of counterparts, each of which when executed and delivered shall be deemed to be an original and such counterparts together shall constitute one and the same resolution, and for the purposes of this resolution, the delivery of a facsimile or a PDF transmitted copy of an executed counterpart of this resolution shall be deemed to be valid execution and delivery of this resolution.

**[THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK]**

The foregoing resolutions are hereby consented to in writing by the directors of the Corporation in accordance with the *Business Corporations Act* on this 15<sup>th</sup> day of October, 2020.

  
\_\_\_\_\_  
Glenn Page

  
\_\_\_\_\_  
Scott Hill

**SCHEDULE "E"**  
**UNIT REGISTER**

See Attached.

















**SCHEDULE "F"**  
**LOCATION OF ASSETS**

Head Office / Chief Executive Office

1.

Location of Assets

1.

2.

This is Exhibit "F" of  
the Affidavit of Scott Hill  
Sworn before me this 27<sup>th</sup> day of January, 2023

A handwritten signature in blue ink, appearing to read "Samantha Hill".

---

A Commissioner, etc.



## Profile Report

OTE LOGISTICS LP as of January 04, 2023

Act	Limited Partnerships Act
Type	Ontario Limited Partnership
Firm Name	OTE LOGISTICS LP
Business Identification Number (BIN)	280459892
Declaration Status	Active
Declaration Date	April 24, 2018
Expiry Date	April 21, 2033
Principal Place of Business	1110 Highway 54, A, Caledonia, Ontario, Canada, N3W2G9
Activity (NAICS Code)	447 - Gasoline stations

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

*V. Quintanilla W.*

Director/Registrar

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## General Partners

Number of General Partners 1

## Partners

### Partner 1

Name	2496750 ONTARIO INC.
Ontario Corporation Number (OCN)	2496750
Entity Type	Ontario Business Corporation
Registered or Head Office Address	7273 Indian Line, Six Nations Of The Grand River Territory, Scotland, Ontario, Canada, N0E 1R0

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

*V. Quintanilla W.*

Director/Registrar

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**Firm Name History**

<b>Name</b>	OTE LOGISTICS LP
<b>Effective Date</b>	January 20, 2022
<b>Previous Name</b>	GEN7 FUEL MANAGEMENT SERVICES LP
<b>Effective Date</b>	November 19, 2020
<b>Previous Name</b>	GEN7 LOGISTICS SERVICES LP
<b>Effective Date</b>	October 01, 2020
<b>Previous Name</b>	GEN7 FUEL MANAGEMENT SERVICES LP
<b>Effective Date</b>	April 24, 2018

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

*V. Quintanilla W.*

Director/Registrar

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**Active Business Names**

<b>Name</b>	GEN7 LOGISTICS
<b>Business Identification Number (BIN)</b>	301307369
<b>Registration Date</b>	November 19, 2020
<b>Expiry Date</b>	November 18, 2025

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

*V. Quintanilla W.*

Director/Registrar

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### Expired or Cancelled Business Names

This entity does not have any expired or cancelled business names registered under the Business Names Act in Ontario.

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.

## Document List

Filing Name	Effective Date
LPA - Declaration of Change for a Limited Partnership (Automated process - Address of Corporate Partner Amended)	November 21, 2022
Declaration of Change to an Ontario Limited Partnership	January 20, 2022
LPA - File a Declaration of an Ontario Limited Partnership	November 19, 2020
LPA - File a Declaration of an Ontario Limited Partnership	October 01, 2020
LPA - File a Declaration of an Ontario Limited Partnership	April 24, 2018

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

*V. Quintanilla W.*

Director/Registrar

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This is Exhibit "G" of  
the Affidavit of Scott Hill  
Sworn before me this 27<sup>th</sup> day of January, 2023

A handwritten signature in blue ink, appearing to read "Samuel Hill".

---

A Commissioner, etc.

**RESOLUTIONS OF THE SOLE DIRECTOR**

**OF**

**2496750 ONTARIO INC.**

(the "Corporation")

on its own behalf and in its capacity as General Partner  
of

**GEN7 FUEL MANAGEMENT SERVICES LP**

**Limited Partnership Agreement**

**CONTEXT:**

- A. The Corporation is the general partner of GEN7 Fuel Management Services LP (the "**Limited Partnership**");
- B. Miles Hill, Scott Hill, Glenn Page and 7069847 Canada Limited (collectively the "**Limited Partners**") have agreed to become limited partners of the Limited Partnership by subscribing for partnership units in the Limited Partnership and entering into a limited partnership agreement (the "**Partnership Agreement**") with the Corporation for the purposes of forming the Limited Partnership on substantially the same terms and conditions set forth in the draft agreement presented to the directors of the Corporation.

**RESOLVED THAT:**

- 1. The formation of the Limited Partnership, and the Corporation acting as its general partner, is authorized and approved.
- 2. The execution, delivery and performance of the Partnership Agreement is authorized and approved.
- 3. The execution, delivery and performance of all other agreements, documents, certificates and instruments as may be contemplated by the Partnership Agreement (the "**Related Documents**") are authorized and approved.
- 4. The acceptance of the subscriptions by the Limited Partners for an aggregate of 1,000 Units in the Limited Partnership for the capital contribution set forth opposite their respective names below is authorized and approved:

<u>Limited Partner</u>	<u>Number of Units</u>	<u>Capital Contribution</u>
Miles Hill	260	\$2,600.00
Scott Hill	260	\$2,600.00
Glenn Page	240	\$2,400.00
7069847 Canada Limited	240	\$2,400.00

- 5. The Limited Partnership has determined that the aggregate capital contribution for the issuance of 1,000 Units in the Limited Partnership is \$10,000.

6. The Limited Partnership having received payment in full of the aggregate capital contribution for the said Units, the Units are issued as fully paid and certificates for them will be issued to the respective Limited Partners.
7. The sole director and officer of the Corporation is hereby authorized and directed, for and on behalf of the Corporation, to execute and deliver the Partnership Agreement and all Related Documents, with or without the corporate seal affixed, and with any additions, deletions or other changes as such person may approve, such approval to be conclusively evidenced by the execution and delivery of the Partnership Agreement and such Related Documents, and to perform and to do all acts or things, in the Corporation's own capacity or in the Corporation's capacity as general partner of the Limited Partnership, as applicable, as, in such person's sole discretion, such person deems necessary or desirable in connection with the formation of the Limited Partnership and to perform the obligations of the Corporation under the Partnership Agreement and any Related Documents.

***SIGNATURE PAGE FOLLOWS***



The foregoing resolutions are consented to by the sole director of the Corporation, pursuant to Section 129 of the *Business Corporations Act* (Ontario), as evidenced by the signature below, which signature may be executed and delivered by facsimile, e-mail or other functionally equivalent electronic means of transmission.

DATED as of the 11<sup>th</sup> day of July, 2018.

---

Miles Hill

**GEN7 FUEL MANAGEMENT SERVICES LP  
LIMITED PARTNERSHIP AGREEMENT**

Between

**2496750 Ontario INC.**

as General Partner

and

**MILES HILL**

as a Limited Partner

and

**SCOTT HILL**

as a Limited Partner

and

**GLENN PAGE**

as a Limited Partner

and

**EACH OTHER PERSON ADMITTED TO THE PARTNERSHIP AS A LIMITED PARTNER**

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## LIMITED PARTNERSHIP AGREEMENT

THIS AGREEMENT is made as of the \_\_\_\_ day of March, 2018

BETWEEN:

**2496750 Ontario INC.**, a corporation incorporated under the laws of the Province of Ontario, as the general partner of the Partnership (the "General Partner")

- and -

**MILES HILL**, an individual resident in the Province of Ontario and a status Indian for purposes of the Indian Act (Canada) and as recognized by the Federal Department of Indian and Northern Affairs, as a limited partner of the Partnership (a "Limited Partner")

- and -

**SCOTT HILL**, an individual resident in the Province of Ontario and a status Indian for purposes of the Indian Act (Canada) and as recognized by the Federal Department of Indian and Northern Affairs, (a "Limited Partner")

- and -

**GLENN PAGE**, an individual resident in the Province of Ontario(a "Limited Partner")

- and -

Each person who, from time to time, becomes a Limited Partner in accordance with the terms of this Agreement

### RECITALS:

- A. The General Partner and the Limited Partners wish to enter into an agreement to form a limited partnership under the *Limited Partnerships Act* (Ontario), as amended under the name GEN7 Fuel Management Services LP (the "Partnership");

**NOW THEREFORE** this Agreement witnesses that in consideration of the covenants and agreements contained in this Agreement and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the parties agree each with the other as follows:

### ARTICLE 1 INTERPRETATION

#### 1.1 Definitions

In this Agreement the following words have the following meanings:

"Act" means the *Limited Partnerships Act (Ontario)*, as amended from time to time.

"Affiliate" means, with respect to any corporation, any of:

- (a) a person who is an affiliate or associate (as those terms are defined in the *Securities Act (Ontario)*) of the corporation; or
- (b) a director or an officer of the corporation or of any person referred to in (a);

"Affected Partner" has the meaning set forth in Section 2.16(b);

"Affected Units" has the meaning set forth in Section 2.16(b);

"Agreement" means this limited partnership agreement, including any and all schedules and exhibits, as it may be amended, confirmed, supplemented or restated by written agreement from time to time;

"Applicable Law" means, at any time, with respect to any Person, property, transaction or event, all applicable laws, statutes, regulations, treaties, judgments and decrees and (whether or not having the force of law) all applicable official directives, rules, consents, approvals, by-laws, permits, authorizations, guidelines, orders and policies of any Governmental Authority having authority over that Person, property, transaction or event;

"Arm's Length" has the meaning ascribed to such term in the Tax Act;

"Associate" means:

- (a) a person or company which beneficially owns or controls, directly or indirectly, voting securities entitling the person or company to more than 10% of the voting rights attached to outstanding securities of the issuer;
- (b) any partner of the person or company referred to in (a);
- (c) any trust or estate in which the person or company referred to in (a) has a substantial beneficial interest or in respect of which the person or company referred to in (a) serves as trustee or in a similar capacity; or
- (d) in the case of a person, a relative of that person, including:
  - (i) the spouse or adult interdependent partner of that person, or
  - (ii) a relative of the person's spouse or adult interdependent partner if the relative has the same home as that person;

"Auditor" means a member in good standing of the Chartered Professional Accountants who is appointed by the General Partner as Auditor of the Partnership;

"Business" is defined in Section 2.3;

"Business Day" means a day other than a Saturday, Sunday or statutory holiday in Ontario;

"Capital Contribution" of a Partner means the total amount of money or property contributed as capital to the Partnership by that Partner or a predecessor of that Partner;



**"Certificate"** means the certificate of limited partnership for the Partnership to be filed under the Act and all amendments thereto and renewals, replacements or restatements thereof;

**"Current Account"** has the meaning specified in Section 4.8;

**"Deadline"** has the meaning specified in Section 2.16(b);

**"Discretion"** means the sole, absolute and unfettered discretion without any requirement to be reasonable or to maintain an even hand, to be exercised as, when and however (including retroactively) deemed fit by the General Partner;

**"Distributable Cash"** means with respect to a particular period, the amount by which the Partnership's cash on hand or to be received in respect of that period (excluding any proceeds from any financing) exceeds:

- (a) unpaid administration expenses of the Partnership;
- (b) amounts required for the business and operations of the Partnership, including operating expenses and capital expenditures;
- (c) amounts required in order to meet all debts, liabilities and obligations in respect of any financing, including reserves to ensure compliance with agreements to which the Partnership is subject;
- (d) any amounts which the General Partner in its Discretion determines is necessary to satisfy the Partnership's current and anticipated debts, liabilities and obligations and to comply with applicable laws; and
- (e) any amounts required to pay Canada Revenue Agency obligations;

**"EBITDA"** means earnings before interest, taxes, depreciation and amortization;

**"Encumbrance"** means any security interest, mortgage, charge, pledge, hypothec, lien, restriction, option, adverse claim, title defect, right of others or other encumbrance of any kind;

**"Extraordinary Resolution"** means a resolution, passed at a meeting of Limited Partner, or any adjournment thereof, called to consider the resolution, by not less than 66⅔% of the votes cast by Limited Partner present in person or by proxy at the meeting, or any adjournment thereof, who are entitled to vote with respect to such resolution, or a resolution in writing signed in one or more counterparts by Limited Partner holding not less than 66⅔% of the entitled votes with respect to such resolution;

**"Fiscal Year"** has the meaning specified in Section 2.6;

**"GAAP"** means, at any time, accounting principles generally accepted in Canada, including those set out in the Chartered Professional Accountants for private enterprises under Part II of the CPA Canada Handbook.

**"General Partner"** means the initial general partner, 2496750 Ontario INC., and any permitted corporate successor thereto, and any other person who becomes the general partner of the Partnership pursuant to Sections 7.13 or 7.14 of this Agreement;

**"Governmental Authority"** means:

- (a) any federal, provincial, state, local, municipal, regional, territorial, aboriginal, or other government, governmental or public department, branch, ministry, or court, domestic or foreign, including any district, agency, commission, board, arbitration panel or authority and any subdivision of any of them exercising or entitled to exercise any administrative, executive, judicial, ministerial, prerogative, legislative, regulatory, or taxing authority or power of any nature; and
- (b) any quasi-governmental or private body exercising any regulatory, expropriation or taxing authority under or for the account of any of them, and any subdivision of any of them

**"Investment Canada Act"** means the *Investment Canada Act* (Canada), as amended from time to time;

**"Limited Partners"** means the Limited Partners listed herein, and any other person who, from time to time, becomes a limited partner of the Partnership in accordance with the terms of this Agreement;

**"Net Income" or "Net Loss"** means the net income or loss of the Partnership for a Fiscal Year determined in accordance with GAAP;

**"Ordinary Resolution"** means:

- (a) a resolution approved by more than 50% of the votes cast by those Partners holding Units who are entitled to vote, in person or by proxy at a duly constituted meeting of Partners or at any adjournment thereof, called in accordance with this Agreement; or
- (b) a written resolution in one or more counterparts signed by Partners holding in the aggregate more than 50% of the Units held by those Partners who are entitled to vote on that resolution at a meeting;

**"Offering"** means an offering of Units under this Agreement;

**"Partners"** means the General Partner and the Limited Partners and **"Partner"** means any one of them;

**"Partnership"** is defined in the recitals above;

**"Person"** means an individual, corporation, body corporate, partnership, joint venture, association, trust or unincorporated organization or any trustee, executor, administrator or other legal representative;

**"Power of Attorney and Declaration"** means a power of attorney and declaration in a form approved by the General Partner;

**"Proportionate Interest"** means at any time with reference to a Partner, in respect of Units held by such Partner, the proportion which the number of Units owned by such Partner at such time, as recorded in the Register, is of the total number of Units owned by such Partner at such time, as recorded in the Register;

**"Register"** means the register of Limited Partners maintained by the General Partner in accordance with this Agreement and the Act;

**"Requisitioning Partners"** has the meaning specified in Section 9.1;

**"Sell Notice"** has the meaning specified in Section 2.16(b);

"**Subscription Form**" means a subscription agreement in a form approved by the General Partner, together with a Power of Attorney and Declaration;

"**Tax Act**" means the *Income Tax Act* (Canada) R.S.C. 1985 (5<sup>th</sup> Supp.), as amended;

"**Taxable Income**" or "**Tax Loss**" means the amount of income or loss of the Partnership for a Fiscal Year determined by the General Partner pursuant to the provisions of the Tax Act;

"**Unit Ratio**" means, subject to any adjustments made in accordance with this Agreement, with respect to any Limited Partner, the number of Units held by such Limited Partner at that time expressed as a percentage of the total number of voting Units issued and outstanding at that time; provided, however, that the total of all Unit Ratios shall always equal one hundred (100%) percent; and

"**Units**" means limited partnership units of the Partnership.

## **1.2 Headings**

In this Agreement, the headings are for convenience of reference only and do not form a part of this Agreement and are not to be considered in the interpretation of this Agreement.

## **1.3 Interpretation**

In this Agreement,

- (a) words importing the masculine gender include the feminine and neuter genders, corporations, partnerships and other persons, and words in the singular include the plural, and vice versa, wherever the context requires;
- (b) all references to designated Articles, Sections and other subdivisions are to the designated Articles, Sections and other subdivisions of this Agreement;
- (c) all accounting terms not otherwise defined will have the meanings assigned to them by, and all computations to be made will be made in accordance with, generally accepted accounting principles in Canada from time to time;
- (d) any reference to a statute will include and will be deemed to be a reference to the regulations and rules made pursuant to it, and to all amendments made to the statute, the regulations and the rules in force from time to time, and to any statute, regulations or rules that may be passed which has the effect of supplementing or suspending the statute referred to or the relevant regulation;
- (e) any reference to a person will include and will be deemed to be a reference to any person that is a successor to that person; and
- (f) "hereof", "hereto", "herein", and "hereunder" mean and refer to this Agreement and not to any particular Article, Section or other subdivision.

## **1.4 Currency**

All references to currency in this Agreement are references to Canadian currency.

## **ARTICLE 2 RELATIONSHIP BETWEEN PARTNERS**

### **2.1 Formation of Partnership**

The Partners hereby form the Partnership named "GEN7 Fuel Management Services LP" under the laws of the Province of Ontario. The Partnership is effective as a limited partnership from the date on which the Certificate is registered in accordance with the Act. The General Partner has the right to change the name of the Partnership and to file an amendment to the Certificate recording the change of name of the Partnership.

### **2.2 Maintaining Status of Partnership**

The General Partner shall be the general partner of the Partnership, and shall do all things and shall cause to be executed and filed all such certificates, declarations, instruments and documents as may be required under the laws of the Province of Ontario and any other province having jurisdiction to effect the constitution of the Partnership. The General Partner and, if requested by the General Partner, the Limited Partners shall execute and deliver as promptly as possible any documents that may be necessary or desirable to accomplish the purposes of this Agreement or to give effect to the formation and operation of the Partnership under any and all applicable laws. The General Partner shall take all necessary actions on the basis of information available to it in order to maintain the status of the Partnership as a limited partnership under the Act during the term of the Partnership.

### **2.3 Business of the Partnership**

The business of the Partnership will consist of business related to fuel station management, ancillary matters related thereto and such other business as the Partners may determine by Extraordinary Resolution from time to time (the "Business").

### **2.4 Business in Other Jurisdictions**

The Partnership will not carry on business in any jurisdiction unless the General Partner has taken all steps which may be required by the laws of that jurisdiction for the Limited Partners to benefit from limited liability to substantially the same extent that the Limited Partners enjoy limited liability under the Act. The Partnership will not carry on business in any jurisdiction in which the laws do not recognize the liability of the Limited Partners to be limited unless, in the opinion of the General Partner, the risks associated with the possible absence of limited liability in that jurisdiction are not significant considering the relevant circumstances. The Partnership will carry on business in a manner so as to ensure, to the greatest extent possible, the limited liability of the Limited Partners, and the General Partner will register the Partnership in other jurisdictions where the General Partner considers it appropriate to do so.

### **2.5 Office of the Partnership**

The principal office of the Partnership will be located at 7331 Indian Line Road, Wilsonville, ON N0E 1Z0. The General Partner may change the location of the principal office provided that the General Partner gives notice as outlined in that Section 12.1.

## **2.6 Fiscal Year**

The first fiscal period of the Partnership will end on December 31 of each year or on the date of dissolution or other termination of the Partnership. Each fiscal period is referred to in this Agreement as a "Fiscal Year".

## **2.7 Status of the General Partner**

The General Partner represents, warrants, covenants and agrees with each Limited Partner that the General Partner:

- (a) is a corporation incorporated and validly subsisting under the laws of the Province of Ontario;
- (b) has the capacity and corporate authority to act as a General Partner and to perform its obligations under this Agreement, and such obligations do not conflict with nor do they result in a breach of any of its constating documents, by-laws or any agreement by which it is bound;
- (c) as long as it is General Partner, it will not carry on any other business
- (d) will act in good faith and in the best interests of the Partnership in carrying out its obligations under this Agreement;
- (e) will exercise the degree of care, diligence and skill that a reasonably prudent and qualified manager would exercise in the management of the business and affairs of the Partnership; and
- (f) holds and will maintain the registrations necessary for the conduct of its business and has and will continue to have all licenses and permits necessary to carry on its business as the General Partner in all jurisdictions where the activities of the Partnership require that licensing or other form of registration of the General Partner.

## **2.8 Status of the Limited Partners**

Each Limited Partner severally represents, warrants and covenants to each other Limited Partner and to the General Partner that:

- (a) such Limited Partner, if a corporation, is a valid and subsisting corporation, has the necessary corporate capacity and authority to execute and deliver this Agreement and to observe and perform its covenants and obligations hereunder, and has taken all necessary corporate action in respect thereof and that it has purchased its Units as principal for its own account, or, if a partnership, syndicate or other form of unincorporated organization, has the necessary legal capacity and authority to execute and deliver this Agreement and to observe and perform its covenants and obligations hereunder and has obtained all necessary approvals in respect thereof, and that it has purchased its Units as principal for its own account;
- (b) such Limited Partner, if an individual, is of the full age of majority and has the legal capacity and competence to execute this Agreement and take all action pursuant hereto, and that it has purchased its Units as principal for its own account;

- (c) is "resident in Canada" for the purposes of the Tax Act and, if the Limited Partner is a partnership or limited partnership, each of the partners in that partnership or limited partnership is also "resident in Canada" within the meaning of that section and will maintain such status during any time in which Units are held by the such Limited Partner;
- (d) such Limited Partner has not financed and will not finance the acquisition of Units with financing for which recourse is or is deemed to be limited for the purposes of the Tax Act;
- (e) such Limited Partner (i) is not a financial institution and (ii) deals at arm's length with the General Partner and each Affiliate of the General Partner unless, in all cases, such Limited Partner has provided written notice to the contrary prior to the date of acceptance of the Limited Partner;
- (f) the Limited Partner is not a "non-Canadian" within the meaning of the Investment Canada Act;
- (g) the Limited Partner understands that the rights of Limited Partners to transfer Units is restricted, and has been independently advised as to restrictions with respect to trading in the Units imposed by this Agreement and by applicable securities legislation in the jurisdiction in which the Limited Partner resides, confirms that no representation has been made to the Limited Partner by or on behalf of the Partnership with respect thereto, acknowledges that the Limited Partner is aware of the characteristics of the Units, the risks relating to an investment therein and of the fact that the Limited Partner may not be able to resell the Units, except in accordance with limited exemptions under applicable securities legislation and regulatory policy;
- (h) this Agreement has been duly and validly authorized by, and constitutes a legal, valid, binding and enforceable obligation of, the Limited Partner;
- (i) the Limited Partner has had the opportunity to consult his, her or its own independent professional advisors with respect to the income tax consequences of purchasing the Units;
- (j) the Limited Partner has such knowledge in financial and business affairs as to be capable of evaluating the merits and risks of an investment in Units and he, she or it is able to bear the economic risk of loss of his, her or its investment; and
- (k) will, at the request of the General Partner, provide such evidence of its status as the General Partner may reasonably require.

## **2.9 Survival of Representations**

- (a) The representations contained in this Article will survive the execution of this Agreement and each party is obligated, as long as it is a General Partner or Limited Partner, as the case may be, to ensure the continuing accuracy of each representation made.
- (b) If at any time any Limited Partner becomes aware that the Limited Partner will be unable to represent and warrant the matters in Section 2.8, such Limited Partner covenants, agrees and undertakes that it will: (i) immediately notify the General Partner of that fact

(prior to becoming unable to so represent) and (ii) comply with the provisions of Section 2.16.

## **2.10 Limitation on Authority of Limited Partners**

Unless a Limited Partner is also the General Partner, no Limited Partner will:

- (a) take part in the administration, control, management or operation of the business of the Partnership or exercise any power in connection therewith or transact business on behalf of the Partnership;
- (b) execute any document which binds or purports to bind any other Limited Partner or the Partnership;
- (c) hold that Limited Partner out as having the power or authority to bind any other Limited Partner or the Partnership;
- (d) have any authority or power to act for or undertake any obligation or responsibility on behalf of any other Partner or the Partnership;
- (e) bring any action for partition or sale or otherwise in connection with the Partnership, or any interest in any property of the Partnership, whether real or personal, tangible or intangible, or file or register or permit to be filed, registered or remain undischarged any lien or charge in respect of any property of the Partnership; or
- (f) compel or seek a partition, judicial or otherwise, of any of the assets of the Partnership distributed or to be distributed to the Partners in kind in accordance with this Agreement.

## **2.11 Promise to Execute and Record**

Each Limited Partner hereby agrees to execute and record or file as and where required:

- (a) this Agreement, any amendment to this Agreement authorized under Article 11 and any other instruments or documents required to continue and keep in good standing the Partnership as a limited partnership under the Act, or otherwise to comply with the laws of any jurisdiction in which the Partnership may carry on business or own or lease property in order to maintain the limited liability of the Partnership and to comply with the applicable laws of that jurisdiction (including any amendments to the Certificate or the Register as may be necessary to reflect the admission to the Partnership of subscribers for or transferees of any Units as contemplated by this Agreement);
- (b) all instruments and any amendments to the Certificate necessary to reflect any amendment to this Agreement;
- (c) any instrument required in connection with the dissolution and termination of the Partnership in accordance with the provisions of this Agreement, including any elections under the Tax Act and under any similar legislation;
- (d) the documents necessary to be filed with the appropriate governmental body or authority in connection with the business, property, assets and undertaking of the Partnership;

- (e) the documents necessary to give effect to the business of the Partnership;
- (f) the documents necessary to give effect to the assignment of a Unit or the admission of a subscriber for or assignee of Units to the Partnership; and
- (g) all other instruments and documents on the Limited Partner's behalf and in the Limited Partner's name or in the name of the Partnership as may be deemed necessary by the General Partner to carry out fully this Agreement in accordance with its terms.

#### **2.12 Unlimited Liability of the General Partner**

The General Partner has unlimited liability for the debts, liabilities and obligations of the Partnership, subject to the Act and this Agreement.

#### **2.13 Limited Liability of Limited Partners**

Subject to the provisions of the Act, the liability of each Limited Partner for the debts, liabilities and obligations of the Partnership will be limited to its Capital Contribution of that Limited Partner plus such Limited Partner's share of undistributed income of the Partnership. A Limited Partner will not be liable for any further claims or assessments or be required to make further contributions to the Partnership, except as specifically provided for herein.

#### **2.14 Indemnity of Limited Partner and the Partnership**

The General Partner will indemnify and hold harmless each Limited Partner (including any former Limited Partner) for all costs, expenses, damages or liabilities suffered or incurred by: (i) the Limited Partner if the limited liability of that Limited Partner is lost for or by reason of the negligence of the General Partner in performing its duties and obligations under this Agreement; or (ii) the Partnership as a result of any breach by the General Partner of this Agreement or its standard of care set forth herein, including any legal expenses incurred by the Partnership in defending an action based in whole or in part upon an allegation that the General Partner has been guilty of such breach, if the defence of such action is substantially unsuccessful with respect to such allegations. If any such action is settled by the General Partner, the action will be deemed, for the purposes of this Section, to have been unsuccessfully defended unless the settlement is approved either by an order of a court of competent jurisdiction or by an Ordinary Resolution.

#### **2.15 Compliance with Laws**

Each Limited Partner will, on the request of the General Partner, immediately execute any documents considered by the General Partner, acting reasonably, to be necessary to comply with any applicable law or regulation of any jurisdiction in Canada, for the continuation, operation or good standing of the Partnership.

#### **2.16 Evidence of Status and Sale of Affected Units**

- (a) Each Limited Partner covenants and agrees that it will, upon request, promptly provide evidence to the General Partner that the representations and warranties set out in Section 2.8 are true and correct. If:
  - (i) a Limited Partner fails to comply with that request;



- (ii) reasonably satisfactory evidence is not provided; or
  - (iii) the General Partner otherwise determines that a person is in contravention of Section 2.8,
- (b) the General Partner, by written notice (a "Sell Notice") to that Limited Partner (the "Affected Partner"), may require the Affected Partner to comply with Section 2.8, or sell the Units owned by the Affected Partner (the "Affected Units"), within 60 days from the date of the Sell Notice (the "Deadline").
- (c) If the Affected Partner has not complied with Section 2.8 or the Affected Units have not been sold by the Affected Partner on or prior to the Deadline, the General Partner may sell the Affected Units on behalf of the Affected Partner without further notice on and subject to the terms contained in this Agreement. The General Partner may sell Affected Units in such manner as the General Partner determines in its sole discretion. For all purposes of a sale, the General Partner is deemed to be the agent and lawful attorney of the Affected Partner. The net proceeds of any sale of Affected Units will be the net proceeds after deduction of any commissions, taxes or other costs of sale.
- (d) If the Affected Units are sold by the General Partner, the Affected Partner will have the right only to receive the net proceeds of that sale. The Partnership will deposit an amount equal to those net proceeds in an account of the Partnership. The amount of that deposit will be payable to the Affected Partner upon presentation of the Affected Partner's acceptance and confirmation of the sale on terms acceptable to the General Partner. Any interest earned on any amount so deposited, net of any applicable taxes, will accrue to the benefit of the Affected Partner.
- (e) From and after the date of that deposit, the Affected Partner will not be entitled to any of the rights under this Agreement in respect of the Affected Units, other than the right to receive the funds so deposited as provided in this Agreement and the Affected Partner will not be entitled to any interest in the Affected Units.
- (f) Notwithstanding anything contained in this Agreement, if the General Partner determines that a Limited Partner has become an Affected Partner, the Affected Partner will be deemed to have ceased to be a Limited Partner effective immediately prior to the date of contravention and will not be entitled to any distributions relating to the Affected Units or to exercise the voting rights attached to the Affected Units, and the Affected Units will be deemed not to be outstanding until acquired by a new holder or owner for the purposes of the Tax Act or until the Affected Partner brings itself into compliance with Section 2.8, provided that holders of other Units will not be entitled to any portion of the Cash Available for Distribution paid in respect of Units that have been deemed not to be outstanding.
- (g) Notwithstanding anything contained herein, the General Partner may waive the application of this Section.

**ARTICLE 3  
THE UNITS**

**3.1 Authorized Units**

The interests of Limited Partners in the Partnership will be divided into and represented by Units. The Partnership is authorized to issue an unlimited number Units.

**3.2 Attributes of Units**

- (a) Each Unit will be identical to all other Units in all respects and, accordingly, will entitle the holder to the same rights and obligations as a holder of any other Unit. No Limited Partner will, in respect of any Unit held by that Limited Partner, be entitled in any circumstance to any preference, priority or right over any other Limited Partner in respect of any Unit held by the other Limited Partner.
- (b) Each Limited Partner's interest will represent the proportion of the total interest of all Limited Partners in the Partnership equal to the number of Units held by it divided by the total number of Units outstanding at any time.
- (c) At all meetings of Partners each Limited Partner will be entitled to one vote for each Unit held.
- (d) Except as provided in this Agreement, each Unit is entitled to participate equally with respect to all distributions made by the Partnership, including distributions of net income and net realized capital gains, if any.

**3.3 Units Fully-Paid and Non-Assessable.**

The Partnership will issue Units only as fully-paid and non-assessable.

**3.4 No Fractional Units**

The Partnership will not issue any fractional Units.

**3.5 Unit Certificates**

- (a) Units will be issued in registered form. All Units will be represented by a fully registered Unit Certificate. Each Limited Partner will be entitled to a Unit Certificate or other instrument from the Partnership evidencing the Limited Partner's ownership of Units.
- (b) Every Unit Certificate must be signed by at least one officer or director of the General Partner and that signature may be mechanically reproduced. The validity of a Unit Certificate will not be affected by the circumstance that a Person whose signature is so reproduced is deceased or no longer holds the office which he or she held when the reproduction of his or her signature in that office was authorized.
- (c) Unit Certificates must be returned to the General Partner prior to the processing of transfer or redemption requests.

### **3.6 Changes in Membership of Partnership**

- (a) No name or address of a Limited Partner will be changed and no transfer of a Unit or substitution or addition of a Limited Partner in the Partnership will be recorded on the record and register except pursuant to a notice in writing received by the General Partner.
- (b) No change of name or address of a Limited Partner, no transfer of a Unit and no admission of a substituted Limited Partner in the Partnership will be effective under this Agreement until all reasonable requirements, as determined by the General Partner, have been met, including the requirements set out in this Section 3.6, and until that change, transfer or substitution is duly reflected in an amendment to the record and register as may be required by the Act or any other Applicable Law, and all filings required by any Applicable Law have been made.
- (c) The rights and obligations of a transferee of Units as a Limited Partner under this Agreement commence and are enforceable by and against a substituted Limited Partner on the date the Record and Register has been amended as required by Section 3.6(a).
- (d) If the transferee complies with the provisions of this Agreement and is entitled to become a Limited Partner the General Partner will be authorized to admit the transferee to the Partnership as a substituted Limited Partner and the Limited Partners consent to the admission of, and will admit, the transferee to the Partnership as a substituted Limited Partner, without further act of the Limited Partners, other than as may be required by Applicable Law.
- (e) No transfer of a fraction of a Unit may be made or will be recognized or entered into or recorded in the Record and Register.
- (f) The Record and Register, as it may be amended, will be conclusive for all purposes of the Partnership as to the names and addresses of the Limited Partners.

Each Limited Partner warrants, represents and agrees that such Limited Partner is, and will be so long as that Limited Partner continues to hold Units, the beneficial owner of all those Units which are from time to time registered in the name of that Limited Partner. No Limited Partner will transfer the legal or beneficial ownership of any Units, except in accordance with the provisions of this Agreement. The application of this Agreement to any such transfer may be waived by Extraordinary Resolution.

### **3.7 No Transfer Except in Compliance with this Agreement**

Each Limited Partner warrants, represents and agrees that such Limited Partner is, and will be so long as that Limited Partner continues to hold Units, the beneficial owner of all those Units which are from time to time registered in the name of that Limited Partner. No Limited Partner will transfer the legal or beneficial ownership of any Units, except in accordance with the provisions of this Agreement. The application of this Agreement to any such transfer may be waived by Extraordinary Resolution.

### **3.8 Permitted Transfers of Units**

A Limited Partner may not sell, assign or otherwise transfer, pledge or encumber any Unit or any other interest it has in the Partnership without the prior written consent of the General Partner, which consent the General Partner may grant or withhold in its sole discretion.

### **3.9 Transfers To an Affiliate**

At any time during the term of this Agreement, a Limited Partner may transfer all or part of that Limited Partner's Units to an Affiliate without having to comply with the provisions of Section 3.8, provided that prior to the transfer:

- (a) the transferring Limited Partner delivers to the General Partner a sworn statutory declaration (or, in the case of a corporation, a statutory declaration of a senior officer) that the transferee is an Affiliate of the transferring Limited Partner;
- (b) the transferring Limited Partner and the Affiliate deliver to the General Partner an agreement addressed to the General Partner and all Limited Partners from time to time that:
  - (i) so long as the Affiliate is a Limited Partner, it will be an Affiliate of the transferring Limited Partner;
  - (ii) the Affiliate will be bound by this Agreement and the transferring Limited Partner will be jointly and severally liable with the Affiliate for the observance and performance of the agreements and obligations of the Affiliate under this Agreement;
  - (iii) the transferring Limited Partner will be entitled to represent the Affiliate in any dealings with the Partnership, the General Partner or any other Limited Partner concerning this Agreement (including, without limitation, any agreement, consent, approval or waiver under or in respect of this agreement), and any party to this Agreement may act in reliance thereon without any need to make any enquiries of the Affiliate; and
- (c) the transferring Limited Partner delivers notice to the General Partner of the number of Units transferred to the Affiliate.

The General Partner will notify the Limited Partners of the details of any Units transferred under this Section.

### **3.10 Transferee Bound**

A transferee of a Unit will, upon becoming a Limited Partner, be conclusively deemed to have acknowledged and agreed to be bound by the provisions of this Agreement as a Limited Partner, including the representations and warranties contained in Section 2.8, as applicable, and will be conclusively deemed to have provided the General Partner with the power of attorney described in Section 7.11.

### **3.11 Documentation on Transfer**

If a transferor of Units is a firm or a corporation, or purports to assign Units in any representative capacity, or if an assignment results from the death, mental incapacity or bankruptcy of a Limited Partner or is otherwise involuntary the transferor or the transferor's legal representative will furnish to the General Partner any documents, certificates, assurances, court orders or other instruments as the General Partner may reasonably require in order to verify that the transfer has been duly authorized.

### **3.12 General Partner May Hold Units**

The General Partner may purchase and hold Units. If the General Partner owns Units, the General Partner will continue to be the general partner of the Partnership but the General Partner will also, as the holder of such Units, have the rights and obligations of a Limited Partner in respect of those Units.

### **3.13 Registrar and Transfer Agent**

The General Partner will act as registrar and transfer agent of the Units and will maintain such books as are necessary to record the names and addresses of the Limited Partner, the number and type of units held by each Limited Partner, and the particulars of transfers of Units. The General Partner will perform all other duties usually performed by a registrar and transfer agent with certificates of shares in a corporation, except as the same may be modified by reason of the nature of the Units.

### **3.14 Inspection of Register**

A Limited Partner, or an agent of a Limited Partner duly authorized in writing, has the right to inspect and make extracts from the Register during normal business hours, and, upon payment of a reasonable fee to the registrar, to obtain a copy of the Register within a period of 10 days from the date of the filing of the written request therefor with the General Partner.

### **3.15 Assignment of Units**

Neither the Partnership nor the General Partner will charge a Limited Partner for any administrative or other expenses incurred with respect to a transfer or assignment of Units. Units must be transferred and assigned in writing substantially in the form of the Transfer Form (or any form acceptable to the General Partner) completed and executed in a manner acceptable to the General Partner. An assignment of Units will be signed by the transferor and transferee and will be accompanied by the certificate(s), if any, issued by the Partnership which represents the Units to be transferred and assigned. If a transferor of Units is a firm or a corporation, or purports to assign such units in any representative capacity, or if an assignment results from the death, mental incapacity or bankruptcy of a Limited Partner or is otherwise involuntary, the transferor or his legal representative will furnish to the General Partner such documents, certificates, assurances, court orders and other instruments as the General Partner may reasonably require to effect the transfer and assignment. Where the transferee complies with all applicable provisions of this Agreement and is entitled to become a Limited Partner, the General Partner is authorized to admit the transferee to the Partnership as a Limited Partner and the Limited Partner hereby consent to the admission of, and will admit, the transferee to the Partnership as a Limited Partner, without further act of the Limited Partner (other than as may be required by this Agreement or by law).

### **3.16 Non-Recognition of Trusts or Beneficial Interest**

Units may be held by nominees on behalf of the beneficial owners. Notwithstanding the foregoing, except as provided for in this Agreement, as required by law or as required by the General Partner in its sole discretion, no person will be recognized by the Partnership or any Partner as holding any Unit in trust, or on behalf of another person with the beneficial interest in that other person, and the Partnership and Partners will not be bound or compelled in any way to recognize (even when having actual notice) any equitable, contingent, future or partial interest in any Unit or in any fractional part of a Unit or any other rights in respect of any unit except an absolute right to the entirety of the Unit in the Limited Partner registered as holder of such Unit. The General Partner shall be entitled to rely upon the Register as final and conclusive proof of any Limited Partner's interest in the Partnership.

### **3.17 Lost Certificates**

Where a Limited Partner claims that a certificate representing Units has been defaced, lost, destroyed or wrongfully taken, the General Partner will cause to be issued a new certificate in substitution for the original certificate if the Limited Partner files with the General Partner a form of proof of loss acceptable to the General Partner, and, at the option of the General Partner, an indemnity bond in form and amount satisfactory to the General Partner to protect the General Partner and the Partnership from any loss, cost or damage that they may incur or suffer by complying with the request to issue a new Unit certificate, and if the Limited Partner satisfies such other reasonable requirements as are imposed by the General Partner.

## **ARTICLE 4 UNIT OFFERINGS CAPITAL CONTRIBUTIONS AND ACCOUNTS**

### **4.1 Unit Offerings**

The General Partner is authorized to raise capital for the Partnership by offering Units and admitting subscribers for Units as Limited Partners. The General Partner may, in its sole discretion solicit or cause to be solicited, subscriptions for the Units. Subject to the terms of this Agreement, the General Partner has the sole and complete discretion to determine the terms of subscriptions and the issuance of Units and may do all things that it deems necessary in connection therewith.

### **4.2 Subscription for Units**

In connection with an Offering, each subscriber (who may be an agent acting for and on behalf of a purchaser of Units pursuant to an Offering) will complete and execute the applicable Subscription Form (including the attached Power of Attorney and Declaration) setting out, among other things, the total subscription price for the Units subscribed for, and that subscription price will be the subscriber's agreed upon Capital Contribution.

### **4.3 Acceptance of Subscription Form by General Partner**

The General Partner will have the right, in its sole discretion, to refuse to accept any Subscription Form, and will reject Subscription Forms submitted by a subscriber who is, or who acts on behalf of a Person who will have a beneficial interest in the Units being subscribed for who does not satisfy the representations, warranties and covenants set out in Section 2.8. If, for any reason, a Subscription Form is not accepted, the General Partner will promptly redeliver to the subscriber the Subscription Form and any subscription monies or cheques representing subscription monies received from that subscriber for the purchase of Units, without interest or deduction.

### **4.4 Admittance as Limited Partner**

Upon acceptance by the General Partner of any Subscription Form, all Partners will be deemed to consent to the admission of the subscriber as a Limited Partner, the General Partner will issue the number of Units the subscriber has subscribed for, will execute this Agreement on behalf of the subscriber, will cause the Register to be amended, and will amend and file any other documents, as may be required by the Act or under any other Applicable Law. The rights and obligations of a subscriber for Units as a Limited Partner commence and are enforceable by and upon that subscriber on the date on which the Record and Register has been amended as required by this Section 4.4.

#### **4.5 Capital**

The capital of the Partnership consists of the aggregate of all Capital Contributions made and not returned to the Partners.

#### **4.6 Initial General Partner Contribution**

On the date hereof, the General Partner shall contribute \$1 per unit to the Partnership.

#### **4.7 Limited Partner Contributions**

On the date hereof the Limited Partners shall contribute capital and subscribe for Units as set out in Schedule "A" hereto and such capital contributions and Unit subscription amounts shall be credited to such Limited Partner's capital accounts. Additional Units may be issued to the Limited Partners at a price per Unit determined by the General Partner either in connection with an Offering or upon subscription for Units pursuant to Section 4.2 of this Agreement.

#### **4.8 Current Accounts**

The General Partner will establish and maintain on the books of the Partnership the following accounts for each Partner:

- (a) an individual capital account which shall be credited by the amount of any Capital Contribution made by such Partner and shall be debited by the amount of any capital distributed or returned to such Partner; and
- (b) an individual current account which shall be credited by the amount of Net Income and all other amounts allocated to such Partner and shall be debited by the amount of Net Loss and all other amounts allocated to such Partner (the "Current Account").

#### **4.9 No Right to Withdraw Amounts**

No Partner will have any right to withdraw any amount or receive any advance or distribution from the Partnership except as expressly provided for in this Agreement and no advance or distribution to any Partner will be deemed a return or withdrawal of amounts contributed to the capital of the Partnership except as expressly provided in this Agreement, but if any court of competent jurisdiction at any time determines that notwithstanding the provisions of this Agreement a Limited Partner is obligated to pay any amount distributed to such Limited Partner to or for the account of the Partnership or to any creditor of the Partnership such obligation will be the obligation of such Limited Partner.

#### **4.10 No Interest Payable on Capital or Current Accounts**

No Partner will have the right to receive interest on any capital or any credit balance in the capital account or Current Account of such Partner. No Partner will be liable to pay interest to the Partnership on any capital or Capital Contribution returned to such Partner or on any authorized negative balance in the capital account or Current Account of such Partner.

#### **4.11 Negative Balance in Capital or Current Accounts**

The interest of a Partner in the Partnership will not terminate by reason of the return of amounts contributed to the capital of the Partnership or a negative balance in the capital account or Current Account of such Partner.

#### **4.12 Determinations by General Partner**

All matters concerning the computation of capital, Current Accounts, the allocation of items of Partnership income, gain, loss, deduction and expense for all purposes of this Agreement and the adoption of any accounting procedures not expressly provided for by the terms of this Agreement shall be determined by the General Partner in its reasonable discretion. Such determinations shall be final and conclusive as to all Partners. Without in any way limiting the scope of the foregoing, if and to the extent that, for income tax purposes, any item of income, gain, loss, deduction or expense of any Partner or the Partnership is constructively attributed to, respectively, the Partnership or any Partner, or any contribution to or distribution by the Partnership or any payment by any Partner or the Partnership is re-characterized, the General Partner may, in its discretion and without limitation, specially allocate items of Partnership income, gain, loss, deduction and expense and/or make correlative adjustments to the Current Accounts in a manner so that the net amount of income, gain, loss, deduction and expense realized by each relevant party (after taking into account such special allocations) and the net capital account balances of the Partners (after taking into account such special allocations and adjustments) shall, as nearly as possible, be equal, respectively, to the amount of income, gain, loss, deduction and expense that would have been realized by each relevant party and the Current Account balances of the Partners that would have existed if such attribution and/or re-characterization and the application of this sentence of this Section had not occurred. Notwithstanding anything expressed or implied to the contrary in this Agreement, in the event the General Partner shall determine, in its discretion, that it is prudent to modify the manner in which the Current Accounts, or any debits or credits thereto, are computed in order to effectuate the intended economic sharing arrangement of the Partners, the General Partner may make such modification

### **ARTICLE 5 ALLOCATIONS AND ADVANCES OR DISTRIBUTIONS**

#### **5.1 Distributions and Order of Priority**

- (a) The General Partner, in its sole discretion, may determine and effect the distribution of Partnership property to the Partners, provided that distributions amongst all Partners shall be based on allocations set forth in Section 5.5(b).
- (b) Any distributions paid by the Partnership which cause its adjusted cost base to be negative and which would trigger a deemed capital gain under subsection 40(3.1) of the Tax Act are deemed to be an advance to Limited Partners during the then current Fiscal Year with a subsequent distribution being declared and paid immediately following the completion of such Fiscal Year.
- (c) The General Partner shall be entitled to withhold tax from any distribution as required by applicable laws.



## **5.2 Payments of Distributions**

Distributions pursuant to this Article will be paid by cheque or wire transfer in lawful money of Canada. The transfer of such funds by the Partnership will be deemed to be payment of the distribution represented thereby.

The General Partner, in its sole discretion, may make distributions to the Partners in the form of securities or other property held by the Partnership. Any non-cash distribution shall be subject to such conditions and restrictions as the General Partner determines are required or advisable to ensure compliance with applicable law. In furtherance of the foregoing, the General Partner may require that the Limited Partner execute and deliver such documents as the General Partner may deem necessary or appropriate to ensure compliance with all securities laws that apply to such distribution and any further transfer of the distributed securities, and may appropriately legend the certificates that represent such securities to reflect any restriction on transfer with respect to such laws.

## **5.3 Repayment of Excess Distribution**

If, as determined by the General Partner, any Limited Partner has received a distribution which exceeds the entitlement of such Limited Partner, such Limited Partner must forthwith repay to the Partnership the amount thereof upon receipt of notice to such effect from the General Partner, and, if such amount is not immediately repaid, the General Partner may deduct such amount from any subsequent distribution otherwise required to be made to such Limited Partner.

## **5.4 Reinvestment**

For greater certainty, Section 5.1 is subject to the right of the General Partner as set out in Section 7.2 to reinvest Net Income and net proceeds from the sale of Partnership property in furtherance of the business of the Partnership described in Section 2.3.

## **5.5 Allocations of Income and Loss**

- (a) Net Income and Net Loss for accounting purposes shall be determined by the General Partner in accordance with GAAP, consistently applied, and all such determinations shall be binding on the Limited Partner. The General Partner shall have the right to adopt a different method of accounting than specified.
- (b) Net Income and Net Loss shall be allocated between the General Partner and the Limited Partners at the end of the fiscal year as follows:
  - (i) 0.1% to the General Partner; and
  - (ii) 99.9% to the Limited Partners.
- (c) The General Partner shall have the right, in computing Taxable Income and Taxable Loss, to adopt different treatments of particular items and to make and revoke such elections on behalf of the Partnership and the Partners as the General Partner deems to be appropriate in order to comply with the provisions of any taxing legislation and reflect the terms of this Agreement.
- (d) Subject to the following sentence, Taxable Income and Taxable Loss, the Partnership's income or loss from a particular source or a source in a particular place and all capital

gains and capital losses and all other amounts that may be allocated by the Partnership for tax purposes shall be allocated to the Partners at the end of the fiscal year in the same proportions as amounts are allocated to the Partners pursuant to Subsection 5.5(b). For tax and accounting purposes, amounts recognized as income, gains, losses, deductions or credits of the Partnership for income tax purposes in a Fiscal Year but not taken into account in Subsection 5.5(b) in such Fiscal Year shall be allocated for income tax purposes among the Partners on the basis on which they would be allocated pursuant to Subsection 5.5(b) as if such amounts were taken into account in computing net income or loss of the Partnership, and the allocation of income, loss, capital gains and capital losses and all other amounts for income tax purposes in subsequent Fiscal Years shall be made taking such prior allocations into account.

## **ARTICLE 6 COVENANTS OF THE PARTNERS**

### **6.1 Covenants of the General Partner**

The General Partner hereby covenants and agrees:

- (a) to maintain appropriate books of account and records relative to the operation of its business and financial condition and relative to the Business and the Partnership;
- (b) not to carry on any business other than the Business;
- (c) to give prompt notice to the Limited Partners upon the occurrence of any default or any Event of Default or any event, circumstance or matter which may reasonably be expected to have a material adverse effect on the financial condition of the Partnership;
- (d) to give to the Limited Partners prompt written notice of any material adverse change in the condition of the business, financial or otherwise, of the General Partner or the Partnership;
- (e) to give to the Limited Partners prompt written notice of all actions, suits, litigation or other proceeding commenced or threatened against the General Partner or the Partnership;
- (f) not amalgamate, consolidate, or merge with any other person, and not enter into any partnership or joint venture with any other person; and
- (g) to deliver and provide to the Limited Partners the following:
  - (i) a quarterly update, including customary operational and financial reporting; and
  - (ii) all other information and/or documentation that the Limited Partner may request, acting reasonably.

**ARTICLE 7  
POWERS, DUTIES AND OBLIGATIONS OF GENERAL PARTNER**

**7.1 Powers, Duties and Obligations**

The General Partner has:

- (a) unlimited liability for the debts, liabilities and obligations of the Partnership;
- (b) subject to the terms of this Agreement and to the Act, the full and exclusive right, power and authority to manage, control, administer and operate the undertaking, business and affairs of the Partnership and to make decisions regarding the undertaking, business and affairs of the Partnership; and
- (c) the full and exclusive right, power and authority to do any act, take any proceeding, make any decision and execute and deliver any instrument, deed, agreement or document necessary for or incidental to carrying out the business of the Partnership for and on behalf of and in the name of the Partnership.

Any action taken by the General Partner on behalf of the Partnership is deemed to be the act of the Partnership and binds the Partnership. A person in dealing with the General Partner acting on behalf of the Partnership is not required to inquire into the authority of the General Partner to bind the Partnership and is entitled to rely conclusively upon the power and authority of the General Partner as set out in this Agreement.

**7.2 Specific Powers and Duties**

Without limiting the generality of the foregoing, the General Partner will have, subject to this Agreement, full power and authority for and on behalf of, and in the name of, the Partnership to:

- (a) enter into any agreement on behalf of the Partnership;
- (b) acquire property, both real and personal, of any description;
- (c) borrow money from time to time, to draw, make, execute and issue promissory notes, evidences of notes, evidences of indebtedness and other negotiable or non-negotiable instruments and to secure the payment thereof by mortgage, charge, debenture, hypothecation, pledge or by the creation of any other appropriate security interest;
- (d) employ all persons necessary for the conduct of the business of the Partnership;
- (e) retain such legal counsel, experts, advisors or consultants as the General Partner considers appropriate, including any of the same as the General Partner, in its discretion, determines to engage on behalf of Limited Partner in the representation of Limited Partner with respect to any adverse position taken by Canada Revenue Agency, and to rely upon the advice of such persons;
- (f) pay management and/or performance fees to any person, which may include the General Partner, deemed in the discretion of the General Partner to be necessary or desirable with respect to the business of the Partnership;

- (g) open and operate any bank account;
- (h) accept subscriptions from persons wanting to be admitted to the Partnership as Limited Partner in accordance with this Agreement and to admit such persons as Limited Partner by entering such person's name in the record of the Partnership;
- (i) pay all costs and expenses of the Partnership;
- (j) reinvest Net Income and net proceeds from the sale of Partnership property rather than making distributions to Limited Partner;
- (k) in its sole discretion, invest or not to invest, as the case may be, funds not immediately required for the business of the Partnership or for distribution to Limited Partner in short-term securities, including money market mutual funds of, or guaranteed by, the Government of Canada, the government of any Canadian province, or a Canadian chartered bank, credit union or trust company;
- (l) commence or defend any action or proceeding in connection with the Partnership;
- (m) file any elections, returns or other documents (including income tax elections, returns or designations) required by any governmental or like authority or reasonably considered necessary or appropriate by the General Partner;
- (n) obtain any insurance coverage deemed, in the discretion of the General Partner, necessary or desirable with respect to the Partnership's activities;
- (o) establish such reserves as the General Partner considers necessary for contingent liabilities;
- (p) do anything that is provided for in this Agreement or that is in furtherance of or is incidental to or is necessary or desirable in respect of the business of the Partnership; and
- (q) other than the duty described in Section 7.4, the General Partner may contract with any person or entity to carry out any of the duties of the General Partner hereunder and may delegate to such person or entity any power and authority of the General Partner hereunder; provided, however, that any such delegation will not release the General Partner from any of its obligations hereunder or from any liability for the non-performance thereof.

The General Partner may contract with any person to carry out any of the duties of the General Partner under this Agreement and may delegate to a person any power and authority of the General Partner under this Agreement, but no contract or delegation will relieve the General Partner of any of its obligations under this Agreement.

### **7.3 Title to Property**

The General Partner may hold legal title to any of the assets or property of the Partnership in its name as bare trustee for the benefit of the Partnership.

#### **7.4 Costs**

The General Partner will be reimbursed by the Partnership for its reasonable out-of-pocket costs incurred in the performance of its obligations under this Agreement.

#### **7.5 Exercise of Duties**

The General Partner covenants that it will exercise the powers and discharge its duties under this Agreement honestly, in good faith, and in the best interests of the Partnership, and that it will exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. The General Partner covenants that it will maintain the confidentiality of financial and other information and data which it may obtain through or on behalf of the Partnership, the disclosure of which may adversely affect the interests of the Partnership or of a Limited Partner, except to the extent that disclosure is required by law or is in the best interests of the Partnership, and it will utilize the confidential information and data only for the business of the Partnership.

#### **7.6 Transactions Involving Affiliates or Associates**

The validity of a transaction, agreement or payment involving the Partnership and an Affiliate or Associate of the General Partner will not be affected by reason of the relationship between the General Partner and the Affiliate or Associate, provided that, if the Partnership is to reimburse the General Partner for the cost and expenses thereof, those costs and expenses will be reasonable and competitive with the costs and expenses charged by independent third parties. Any or all of the directors and officers of the General Partner may be officers or directors of or otherwise interested in or related to the Affiliates or Associates and the General Partner will not be prevented from approving and implementing any transaction, agreement or payment by reason of the common directors or officers.

#### **7.7 Limitation of Liability**

Subject to Section 2.12, the General Partner is not personally liable for the return of any Capital Contribution made by a Limited Partner to the Partnership, and neither the General Partner nor its officers, directors, shareholders, employees or agents are liable, responsible for or accountable in damages or otherwise to the Partnership or a Limited Partner for an action taken or a failure to act on behalf of the Partnership within the scope of the authority conferred on the General Partner by this Agreement or by law, unless the act or omission was performed or omitted fraudulently or in bad faith or constituted wilful misfeasance or gross negligence in the performance of their obligations or the reckless disregard of such obligations.

#### **7.8 Indemnification of the General Partner**

The Partnership hereby agrees to indemnify and hold the General Partner, its officers, directors, shareholders, employees or agents harmless from and against any and all losses, expenses, liabilities and damages by reason of acts, omissions or alleged acts or omissions arising out of the activities of the General Partner on behalf of the Partnership or in furtherance of the interests of the Partnership, so long as the acts, omissions or the acts or omissions on which the actual or threatened action, proceeding or claim are based were not performed or omitted in bad faith and were not attributable to the wilful misfeasance, bad faith or gross negligence in the performance of the obligations or in reckless disregard of such obligations of the General Partner, its officers, directors, shareholders, employees or agents.

### **7.9 Conflict of Interest**

The Limited Partners acknowledge that the General Partner, its directors, officers and shareholders currently have varied business interests and as such may be, and are permitted to be, engaged in and may act as partner, agent or in any other capacity for other funds or partnerships and may act as a partner, director, officer or shareholder in other ventures or entities related, directly or indirectly, to the Partnership's business, activities or assets, whether or not the Partnership has an interest therein and may hold securities or other interests in various entities, including those in which the Partnership has an interest; provided however, that nothing herein shall release the General Partner from the obligations contained in Section 7.5 hereof.

### **7.10 Other Matters Concerning the General Partner**

- (a) The General Partner may rely and will be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, bond, debenture, or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties.
- (b) The General Partner may consult with legal counsel, accountants, appraisers, management consultants, investment bankers and other consultants and advisors selected by it, and any act taken or omitted in reliance upon the opinion (including, without limitation, an opinion of counsel) of any of those persons as to matters that the General Partner reasonably believes to be within that person's professional or expert competence will be conclusively presumed to have been done or omitted in good faith and in accordance with that opinion.
- (c) The General Partner has the right, in respect of any of its power, authority or obligations under this Agreement, to act through any of its duly authorized officers.
- (d) Any standard of care or duty imposed under the Act or any applicable law will be modified, waived or limited as required to permit the General Partner to act under this Agreement or any other agreement contemplated by this Agreement and to make any decision pursuant to the power of authority prescribed in this Agreement, so long as that action is reasonably believed by the General Partner, acting in good faith, to be in, or not opposed to, the best interest of the Partnership.

### **7.11 Power of Attorney**

Upon execution and delivery of the Subscription Agreement, each Limited Partner hereby irrevocably nominates, constitutes and appoints the General Partner, with full power of substitution, as agent and true and lawful attorney to act for and on behalf of such Limited Partner with full power and authority in the name, place and stead of such Limited Partner to:

- (a) execute (under seal or otherwise), swear to, acknowledge, deliver and record or file as and where required:
  - (i) this Agreement and any amendment to this Agreement, if made in accordance with Section 11.1 or 11.2 herein, the certificate, any declaration, declaration of change, or form or any amendment thereto and any other instrument required to form, qualify, continue and keep in good standing the Partnership as a limited partnership under the laws of the Province of Ontario, or otherwise to comply

with the laws of any jurisdiction in which the Partnership may carry on business or own, lease or have property in order to maintain the limited liability of the Limited Partner and to comply with the applicable laws of such jurisdiction;

- (ii) any instrument, declaration, conveyance or certificate necessary to reflect, from time to time, any amendment to this Agreement, if made in accordance with Section 11.1 or 11.2 herein;
  - (iii) any instrument, declaration, conveyance or certificate required in connection with the dissolution or termination of the Partnership;
  - (iv) any instrument required in connection with any election relating to the Partnership that may be made under the Tax Act or analogous federal or provincial fiscal legislation deemed necessary or desirable to carry out the provisions of this Agreement;
  - (v) any document required to be filed with the appropriate governmental body, agency or authority in connection with the business, property, assets and undertaking of the Partnership;
  - (vi) any document on behalf of and in the name of the Partnership as may be necessary to give effect to the business of the Partnership;
  - (vii) any document on behalf of and in the name of a Limited Partner as may be necessary to amend the certificate to reflect the assignment of a Unit;
  - (viii) any other instrument or document on behalf of and in the name of the Partnership, including without limitation, all debt instruments, as may be deemed necessary by the General Partner to carry out this Agreement fully in accordance with its terms; and
- (b) act as its representative at the relevant closing of the offering of Units, to release the funds representing the subscription price for the Units, to execute or complete on its behalf all closing receipts and documents as required or deemed necessary, to receive on its behalf certificates representing Units subscribed for pursuant to the applicable Subscription Agreement, and to complete or correct errors or omissions in any form or document provided by the Limited Partner; and
- (c) invest the assets of the Partnership as the General Partner deems appropriate.

To evidence the foregoing, each Limited Partner, in such form or forms as may be approved from time to time by the General Partner, or in executing this Agreement, has executed or will execute, as the case may be, a power of attorney containing the powers set forth above.

The Power of Attorney once granted, is irrevocable and will be a power coupled with an interest and, to the extent permitted by law, is binding upon the estate of the Limited Partner and will be exercisable during any subsequent legal incapacity of a Limited Partner, will survive the assignment by the Limited Partner of the whole or any part of the interest of such Limited Partner in the Partnership, extends to and is binding upon the heirs, executors, administrators and other legal representatives and the successors and assigns of such Limited Partner and may be exercised by the General Partner for and on behalf of each

Limited Partner in executing any instrument with a single signature as attorney and agent for each of the Limited Partner and all of them.

Each Limited Partner agrees to be bound by any representation or action made or taken by the General Partner pursuant to such Power of Attorney and hereby waives any and all defences which may be available to contest, negate or disaffirm the action of the General Partner within such Power of Attorney.

#### **7.12 Restrictions upon the General Partner**

The General Partner's power and authority does not extend to any powers, actions or authority enumerated in Section 9.18 unless and until the requisite Extraordinary Resolution is passed by the Partners. The General Partner will not:

- (a) commingle the funds of the Partnership with the funds of the General Partner or any of its Affiliates or Associates or with the funds of any other person;
- (b) dissolve the Partnership except in accordance with the provisions of Article 10; or
- (c) assign, transfer or otherwise dispose of its entire interest as General Partner without approval of the Limited Partner.

#### **7.13 Removal of General Partner**

The General Partner will be removed as the General Partner as follows:

- (a) Upon the bankruptcy, dissolution, liquidation or winding-up or making of an assignment for the benefit of creditors of the General Partner, or upon the appointment of a receiver of the assets and undertaking of the General Partner, the General Partner will be deemed to have been removed as the general partner of the Partnership and a new general partner will, in such instances, be appointed by the Limited Partner by an Ordinary Resolution within 180 days of receipt of written notice of that event (which written notice would be provided by the General Partner promptly upon the occurrence of that event) provided that the General Partner will not cease to be the General Partner until the earlier of the appointment of a new General Partner and the expiry of the 180 day period.
- (b) The Limited Partners may remove the General Partner if the General Partner has committed a material breach of this Agreement, which continues for a period of 90 days after written notice is given to the General Partner of that breach, and substitute another as the General Partner in its stead by an Extraordinary Resolution, but only if the Limited Partner appoint, concurrently with the removal, a replacement General Partner that assumes all the responsibilities and obligations of the removed General Partner under this Agreement.

#### **7.14 Voluntary Change to a General Partner**

The General Partner may transfer its interest as a General Partner of the Partnership, provided that the proposed new General Partner has been approved by Extraordinary Resolution and the General Partner transfers its interest in the Partnership to the new General Partner in consideration for the payment of \$1. The General Partner is bound by the terms of this Agreement until the transfer of its interest as general partner has been approved by an Extraordinary Resolution and the new General Partner has agreed in



writing to be bound by the agreements, representations and warranties contained on the part of the General Partner as General Partner under this Agreement.

## **ARTICLE 8 FINANCIAL INFORMATION**

### **8.1 Books and Records**

The General Partner will keep or cause to be kept proper books of account and records of the Partnership.

### **8.2 Annual Report**

The General Partner will send or cause to be sent to each Limited Partners within 90 days of the end of each Fiscal Year of the Partnership the accountant reviewed financial statements of the Partnership containing: (a) a balance sheet for the Partnership as at the end of the most recently completed Fiscal Year; (b) an income or loss statement for such Fiscal Year; (c) a statement of changes in financial position for that Fiscal Year; (d) a statement of changes in such Partner's Capital Account for that Fiscal Year; (e) the Auditor's review engagement report on such financial statements of the Partnership; and (f) such other information as in the reasonable opinion of the General Partner is material to the operations of the Partnership. The accountant reviewed financial statements will include comparative financial statements for the immediately preceding Fiscal Year (if any) prior to the Fiscal Year reported on in the financial statements.

### **8.3 Quarterly Report**

The General Partner will send or cause to be sent to each Limited Partner within 45 days of the end of each fiscal quarter of the Partnership, unaudited financial statements containing: (a) an unaudited balance sheet for the Partnership as at the end of the most recently completed fiscal quarter; (b) an unaudited income or loss statement for that fiscal quarter; (c) an unaudited statement of changes in financial position for that fiscal quarter; and (d) such other information as in the reasonable opinion of the General Partner is material to the operations of the Partnership.

### **8.4 Income Tax Information**

The General Partner will send or cause to be sent to each person who was a Limited Partner:

- (a) on the last day of the Fiscal Year; or
- (b) at the date of dissolution of the Partnership,

by, in the case of (a) above, the 31<sup>st</sup> day of March of the following year, or in the case of (b) above, within 90 days of dissolution, as the case may be, or within any other shorter period as may be required by applicable law, all information, in suitable form, relating to the Partnership necessary for a person to prepare that person's Canadian federal and provincial income tax returns. The General Partner will file, on behalf of itself and the Limited Partners, annual Partnership information returns and any other information returns required to be filed under the Tax Act and any other applicable tax legislation in respect of the Partnership.

### **8.5 Accounting Policies**

The General Partner is authorized to establish from time to time accounting policies with respect to the financial statements of the Partnership and to change from time to time any policy that has been so established so long as those policies are consistent with the provisions of this Agreement and with generally accepted accounting principles in Canada.

### **8.6 Appointment of Auditor**

The General Partner will, on behalf of the Partnership, select the Auditor on behalf of the Partnership to review and report to the Partners upon the financial statements of the Partnership for, and as at the end of each Fiscal Year, and to advise upon and make determinations with regard to financial questions relating to the Partnership or required by this Agreement to be determined by the Auditor.

## **ARTICLE 9 MEETINGS OF THE LIMITED PARTNER**

### **9.1 Meetings of Partners**

The General Partner may call a meeting of Partners at any time for such purposes as the General Partner sees fit. Where the Limited Partner gives the General Partner written notice requesting a meeting of the Limited Partners (the "Requisitioning Partner"), the General Partner will, within 30 days of receipt of the notice, give notice calling a meeting of the Partners. If the General Partner fails to do so, the Requisitioning Partner may call a meeting of the Partners by giving notice to the Partners in accordance with this Agreement. Every meeting, however called, will be conducted in accordance with this Agreement.

### **9.2 Place of Meeting**

Every meeting will be held in Wilsonville, Ontario or at such other place in Canada as may be approved by Extraordinary Resolution or as determined by the General Partner.

### **9.3 Notice of Meeting**

Notice of any meeting will be given to each Partner by prepaid registered mail or by personal delivery not less than 10 days prior to such meeting, and will state: (a) the time, date and place of such meeting; and (b) in general terms, the nature of the business to be transacted at the meeting.

### **9.4 Notice of Meeting/Adjournment**

Notice of an adjournment of a meeting of Partners need not be given if the adjourned meeting is held within 14 days of the original meeting. Otherwise, notice of an adjournment of a meeting will be given not less than 10 days in advance of the adjournment of the meeting and otherwise in accordance with this section, except that the notice need not specify the nature of the business to be transacted if unchanged from the original meeting.

### **9.5 Accidental Omissions**

Accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any Limited Partner (but not the General Partner) will not invalidate the proceedings at that meeting.

## 9.6 Proxies

Any Partner entitled to vote at a meeting may vote by proxy if the proxy has been received by the General Partner no later than the close of business on the day prior to the day of the meeting or if the proxy has been received by the chair of the meeting for verification prior to the meeting.

## 9.7 Validity of Proxies

A proxy purporting to be executed by or on behalf of a Partner and completed in accordance herewith will be considered to be valid unless challenged at the time of or prior to its exercise. The person challenging the proxy will have the burden of proving to the satisfaction of the chairman of the meeting that the proxy is invalid and any decision of the chairman concerning the validity of a proxy will be final. A proxy holder need not be a holder of a Unit.

## 9.8 Form of Proxy

Every proxy will be substantially in the form which follows or such other form as may be approved by the General Partner or as may be satisfactory to the chairman of the meeting at which it is sought to be exercised:

"I, \_\_\_\_\_, of \_\_\_\_\_, being a Partner of GEN7 Fuel Management Services LP, hereby appoint \_\_\_\_\_ of \_\_\_\_\_, as my proxy, with full power of substitution, to vote for me and on my behalf at the meeting of Limited Partner to be held on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and every adjournment thereof and every poll that may take place in consequence thereof.

Dated: \_\_\_\_\_

## 9.9 Corporations

A Partner which is a corporation may appoint an officer, director or other authorized person as its representative to attend, vote and act on its behalf at a meeting of Partners.

## 9.10 Attendance of Others

Any officer or director of the General Partner, legal counsel for the General Partner and the Partnership and representatives of the Auditor will be entitled to attend any meeting of Limited Partner. The General Partner has the right to authorize the presence of any person at a meeting of Limited Partner regardless of whether the person is a Partner. With the approval of the General Partner, that person is entitled to address the meeting.

## 9.11 Chair

The General Partner may nominate a person (who need not be a Limited Partner) to be chair of a meeting of Partners and the person nominated by the General Partner will be chairman of such meeting unless the Partners elect a chair by Ordinary Resolution.

### **9.12 Quorum**

Subject to this Agreement, a quorum at any meeting of Limited Partners will consist of two or more persons present in person who collectively hold or represent by proxy not less than 100% of the outstanding Units and who are entitled to vote on any resolution and a quorum for any specific resolution presented to the meeting shall be two or more persons present who hold or represent by proxy not less than 100% of the outstanding Units entitled to vote on such resolution. If, within half an hour after the time fixed for the holding of such meeting, a quorum for the meeting is not present, the meeting:

- (a) if called by or on the requisition of the Limited Partners, will be terminated; and
- (b) if called by the General Partner, will be held at the same time and, if available, the same place not less than ten days or more than 21 days later (or if that date is not a business day, the first business day after that date), and the General Partner will provide notice, if any, in accordance with Section 9.4. At such reconvened meeting the quorum for the meeting and the quorum for any specific resolution to be passed at such meeting will consist of the Limited Partners then present in person or represented by proxy at such reconvened meeting.

### **9.13 Voting Rights of General Partner**

The General Partner, as such, may not vote at any meeting of Limited Partners. Such General Partner, if also a holder of Unit(s) of the Partnership, may, however, vote as a Limited Partner.

### **9.14 Voting**

- (a) Every question submitted to a meeting of Limited Partners will be decided on a show of hands. The chairman of the meeting of Limited Partners will be entitled to vote in respect of Units held by the chairman or represented by the chairman by proxy and, in the case of an equality of votes, the chairman of the meeting will have a casting vote. On any vote at a meeting of Limited Partners, a declaration by the chairman of the meeting concerning the result of the vote will be conclusive.
- (b) Any Limited Partner who is a party to a contract or proposed contract or who has a material interest in a contract, proposed contract or transaction (either directly or indirectly, including through an Affiliate or Associate which is the subject matter of a resolution) shall not be entitled to any vote on such resolution; provided however, that a Limited Partner shall be deemed not to have a material interest in a contract, proposed contract or transaction if the interest arises merely from the ownership of Units where the Limited Partner will have or receive no extra or special benefit or advantage not shared on an equal basis by all other Limited Partners.

### **9.15 Poll**

A poll requested or required concerning the election of a Chair or an adjournment will be taken immediately on request. A poll requested or required concerning any other matter will be taken at the meeting or an adjournment of the meeting in such manner as the Chair directs.

### **9.16 Resolution in Writing**

A written resolution signed by Limited Partners holding the requisite number of Units to qualify the resolution as an Ordinary Resolution or an Extraordinary Resolution, as the case may be, has the same effect as if it had been passed at a meeting of Limited Partners and is deemed to satisfy all of the requirements of this Agreement relating to meetings of Limited Partners.

### **9.17 Powers of Limited Partner; Resolutions Binding**

The Limited Partners will have only the powers set forth in this Agreement and any additional powers provided by law. Subject to the foregoing sentence, any resolution of the Partners passed in accordance with this Agreement will be binding on all the Partners and their respective heirs, executors, administrators, successors and assigns, whether or not any such Partner was present in person or voted against any resolution so passed.

### **9.18 Powers Exercisable by Extraordinary Resolution**

The following powers will only be exercisable by Extraordinary Resolution passed by the Partners:

- (a) dissolving the Partnership, except as otherwise provided for under Section 10.1(a);
- (b) removing the General Partner and electing a new General Partner as provided in Subsection 7.13(b);
- (c) waiving any default on the part of the General Partner on such terms as the Partners may determine;
- (d) continuing the Partnership in the event that the Partnership is terminated by operation of law;
- (e) changing the Fiscal Year end of the Partnership;
- (f) amending, modifying, altering or repealing any Extraordinary Resolution previously passed by the Partners;
- (g) amending this Agreement pursuant to Section 11.1 in accordance with the provisions thereof; and
- (h) purchasing or otherwise acquiring any other business.

### **9.19 Minutes**

The General Partner will cause minutes to be kept of all proceedings and resolutions at every meeting of the Partners and will cause all such minutes and all resolutions of the Partners consented to in writing to be made and entered in books to be kept for that purpose. Any minutes of a meeting signed by the chairman of the meeting will be deemed evidence of the matters stated in them and such meeting will be deemed to have been duly convened and held and all resolutions and proceedings shown in them will be deemed to have been duly passed and taken.

## **9.20 Additional Rules and Procedures**

To the extent that the rules and procedures for the conduct of a meeting of the Partners are not prescribed in this Agreement, the rules and procedures will be determined by the chairman of the meeting.

## **ARTICLE 10 DISSOLUTION AND LIQUIDATION**

### **10.1 Dissolution**

The Partnership will be dissolved upon the occurrence of any of the following events:

- (a) 99 years from the date the Certificate was filed, subject to extension by the General Partner in its sole discretion;
- (b) the bankruptcy, dissolution, liquidation or winding-up, or making of an assignment for the benefit of creditors, of the General Partner during the term of this Agreement, unless the General Partner is replaced as provided in subsection 7.13(a); and
- (c) the passage of an Extraordinary Resolution approving the dissolution of the Partnership.

### **10.2 Liquidation of the Partnership**

In the event of the dissolution of the Partnership for any reason, the General Partner, or in the event that the General Partner is bankrupt, a receiver appointed by an Extraordinary Resolution, will commence to wind up the affairs of the Partnership and to liquidate its assets. The Partners will continue to share net income, net loss, taxable income and tax loss during the period of liquidation in the same proportions as before the dissolution. The General Partner or receiver has the full right and unlimited discretion to determine the time, manner and terms of any sale of assets of the Partnership pursuant to the liquidation, having regard to the nature and condition of the assets of the Partnership.

### **10.3 Distribution**

Following the payment of all debts and liabilities of the Partnership and all expenses of liquidation, but conditional upon the right of the General Partner or receiver to set up such cash reserves as it may deem necessary for any contingent or unforeseen liabilities or obligations of the Partnership, the balance of the proceeds of the liquidation and the other funds of the Partnership will be distributed to the holders of the Units in accordance with their Proportionate Interests.

### **10.4 Statement**

Within a reasonable time following the completion of the liquidation of the Partnership, the General Partner will supply to each of the Limited Partner a statement, reviewed by the Auditor, setting out the assets and liabilities of the Partnership as of the date of complete liquidation and the distribution to each Partner.

### **10.5 Cash Distribution**

Unless authorized by the Partners by Extraordinary Resolution, no Partner has the right to demand or receive property other than cash upon dissolution and termination of the Partnership.

## **10.6 Termination**

Upon the completion of the liquidation of the Partnership and the distribution of all of the Partnership funds, the Partnership will terminate and the General Partner has the authority to execute and record any declarations, certificates, instruments and documents required to effect the dissolution or termination of the Partnership.

## **10.7 Continuity**

Except as specifically set forth in this Agreement, the Partnership will continue and will not dissolve or terminate upon the occurrence of any event, including the admission of a new or additional General Partner or Limited Partner or by the withdrawal, removal, death, insolvency, bankruptcy or other disability of a Partner.

## **10.8 Receiver**

Subject to Section 10.2, the General Partner will be the receiver of the Partnership charged with the responsibility of liquidating the Partnership upon its dissolution. If the General Partner is unable or unwilling to act in that capacity, then the Limited Partners will appoint by Extraordinary Resolution another appropriate person to act as the receiver of the Partnership. The receiver will proceed diligently to wind up the affairs of the Partnership and to distribute the net proceeds from the sale of the assets of the Partnership. During the course of the liquidation, the receiver will operate the properties and undertaking of the Partnership and in doing so is vested with all the powers and authority of the General Partner in relation to the Partnership under the terms of this Agreement. The Partnership will pay to the receiver its reasonable fees and disbursements incurred in carrying out its duties.

## **10.9 No Right to Dissolve**

Except as provided for in this Article 10, no Limited Partner has the right to ask for the dissolution of the Partnership, for the winding up of its affairs or for the distribution of its assets.

## **10.10 Return of Limited Partner's Contribution**

A Limited Partner has the right to demand and receive the return of the Limited Partner's Capital Contribution upon the earlier of:

- (a) the dissolution of the Partnership; and
- (b) when all of the Partners consent to the return of the Capital Contribution.

## **ARTICLE 11 AMENDMENT**

### **11.1 General**

Except as otherwise set out in this Article 11, this Agreement may be amended by an Extraordinary Resolution approving the amendment; provided, however, that no such amendment that adversely affects the rights of the General Partner (other than a resolution relating to the removal of the General Partner and the appointment of a new general partner) may be made without the approval of the General Partner.

### **11.2 Amendment by the General Partner**

The General Partner may, without prior notice to or consent from any Limited Partner, amend the provisions of this Agreement from time to time:

- (a) for the purpose of reflecting the admission, substitution, withdrawal or removal of Limited Partner in accordance with this Agreement;
- (b) to change the name of the Partnership or the location of the principal place of business or the registered office of the Partnership;
- (c) for the purpose of making a change that, in the sole discretion of the General Partner is reasonable and necessary or appropriate to enable Partners to take advantage of, or not to be detrimentally affected by, changes in the Tax Act or other taxation laws;
- (d) to cure an ambiguity or to correct or supplement a provision of this Agreement which, in the opinion of counsel to the Partnership, may be defective or inconsistent with any other provision of this Agreement, but only if in the opinion of counsel the cure, correction or supplemental provision does not materially adversely affect the interests of any Limited Partner; or
- (e) for the purpose of protecting the Limited Partner,

if, in the opinion of counsel to the Partnership, such amendment does not materially adversely affect the interests of any Limited Partner.

The Limited Partners will be notified of any amendment to this Agreement under this Section within 30 days after the effective date of the amendment.

### **11.3 Limitations on Amendment**

This Agreement may not be amended without the unanimous approval of all the Limited Partners if the effect of the amendment is to:

- (a) alter the ability of the Limited Partners to remove the General Partner without the consent of the General Partner;
- (b) change the liability of a Limited Partners;
- (c) allow a Limited Partner to exercise control of the business or take part in the management of the Partnership;
- (d) reduced the interest in the Partnership of the Limited Partners;
- (e) change the Partnership from a limited partnership to a general partnership;
- (f) limit the right of a Limited Partner to vote at any meeting of the Limited Partners; or
- (g) amend this Section 11.3 or Section 9.18.



**ARTICLE 12  
NOTICES**

**12.1 Notices**

A notice, demand, request, statement or other evidence required or permitted to be given under this Agreement must be written. It will be sufficiently given:

- (a) if delivered personally or by courier, or sent by prepaid registered mail, to a party addressed as follows:
  - (i) if to the General Partner, at the registered office of the Partnership, at 7331 Indian Line Road, Wilsonville, ON N0E 1Z0; and
  - (ii) if to a Limited Partner, to such Limited Partner at its last address as shown in the records of the Partnership,

and any such notice will be deemed to have been received 5 business days after mailing, or if delivered, when delivered. If the notice is mailed and there occurs between the time of mailing and the actual or deemed receipt of the notice, a mail strike, slowdown or other labour dispute that might affect delivery of the notice, then the notice is effective only if actually received; or

- (b) if delivered by e-mail, to a party addressed as follows:
  - (i) if to the General Partner at 7331 Indian Line Rd Wilsonville, ON
  - (ii) if to a Limited Partner, to such Limited Partner at its last email address shown in the records of the Partnership,

and any such notice will be deemed to have been received upon receipt by the sending party of an email reply confirmation.

**ARTICLE 13  
GENERAL**

**13.1 Binding Agreement**

Subject to the restrictions on assignment and transfer herein contained, this Agreement will enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators and other legal representatives, successors and assigns.

**13.2 Time**

Time will be of the essence hereof.

**13.3 Severability**

Each provision of this Agreement is intended to be severable. If any provision of this Agreement, or the application of such provision to any person or circumstance, is inapplicable for any reason, the remainder of this Agreement, or the application of such provision to any person or circumstance other than those to which it is inapplicable, will not be affected thereby.

#### **13.4 Governing Law**

This Agreement will be governed and construed according to the laws of the Province of Ontario, without giving effect to the principles thereof relating to the conflict of laws and the parties hereto irrevocably attorn to the jurisdiction of the courts thereof.

#### **13.5 Further Documents**

The parties will do such things and execute and deliver such documents as counsel to the Partnership considers necessary or desirable to carry out the terms and intent of this Agreement.

#### **13.6 Successors and Assigns**

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators and other legal representatives and, to the extent permitted hereunder, their successors and assigns.

#### **13.7 Entire Agreement**

This Agreement constitutes the entire agreement among the parties to this Agreement with respect to the subject matter of this Agreement.

#### **13.8 Limited Partner Not a General Partner**

If any provisions of this Agreement has the effect of imposing upon any Limited Partner any of the liabilities or obligations of a general partner under the Act, that provision will be of no force and effect.

#### **13.9 Counterparts**


This Agreement, or any amendment to it, may be executed in multiple counterparts, each of which will be deemed an original agreement, and all of which will constitute one agreement. This Agreement may also be executed and adopted in any subscription form or similar instrument signed by a Limited Partner with the same effect as if such Limited Partner had executed a counterpart of this Agreement. All counterparts and adopting instruments will be construed together and will constitute one and the same agreement.

*[Remainder of this page intentionally left blank; signature page follows.]*

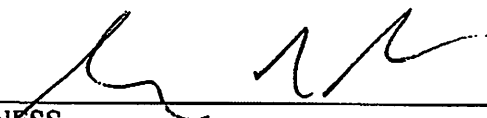
**IN WITNESS OF WHICH** the parties hereto have executed this Agreement.

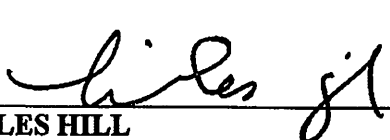
**General Partner:**

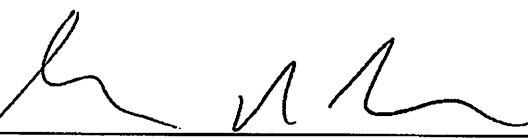
**2496750 Ontario INC.**


Per:   
Miles Hill  
President

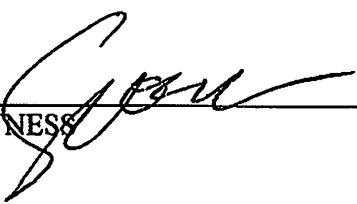
**Limited Partners:**

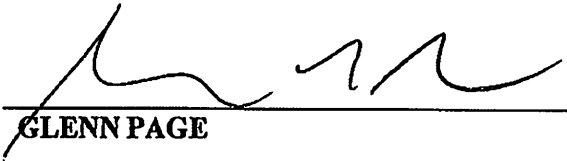
  
WITNESS

  
MILES HILL

  
WITNESS

  
SCOTT HILL

  
WITNESS

  
GLENN PAGE

**SCHEDULE "A"**

**INITIAL CAPITAL CONTRIBUTIONS AND UNIT SUBSCRIPTIONS OF THE LIMITED PARTNERS**

In accordance with Section 4.7 of this Agreement, the Limited Partners agree to contribute capital to and subscribe for Units of the Partnership as follows:

<b>NAME LIMITED PARTNER</b>	<b>OF</b>	<b>NUMBER UNITS</b>	<b>OF</b>	<b>PERCENTAGE OF UNITS</b>	<b>Value</b>
Miles Hill		350		35%	\$3500
Scott Hill		400		40%	\$4000
Glenn Page		250		25%	\$2500

Scott Hill, Kristine Hill

**Notice details**

<b>Business number</b>	78493 0489 RT0001
<b>Period covered</b>	Jan 1, 2018 - Mar 31, 2018
<b>Date issued</b>	Apr 13, 2018
<b>Payment number</b>	0844-19295097-1

**Summary**

Reporting Period: Jan 1, 2018 - Mar 31, 2018  
Reference Number: 18087000932370183

**Sales and other revenue**

Line	Description	\$ Amount	CR
101	Sales and other revenue	0.00	

**Balance calculation**

Line	Description	\$ Amount	CR
105	Total GST/HST and adjustments	0.00	
108	Total ITCs and adjustments	2,123.66	CR
109	Net tax assessed	2,123.66	CR
	Result of assessment	2,123.66	CR

This is Exhibit "H" of  
the Affidavit of Scott Hill  
Sworn before me this 27<sup>th</sup> day of January, 2023

A handwritten signature in blue ink, appearing to read "Samantha Hill".

---

A Commissioner, etc.



## Profile Report

2496750 ONTARIO INC. as of January 03, 2023

<b>Act</b>	Business Corporations Act
<b>Type</b>	Ontario Business Corporation
<b>Name</b>	2496750 ONTARIO INC.
<b>Ontario Corporation Number (OCN)</b>	2496750
<b>Governing Jurisdiction</b>	Canada - Ontario
<b>Status</b>	Active
<b>Date of Incorporation</b>	December 17, 2015
<b>Registered or Head Office Address</b>	7273 Indian Line, Six Nations Of The Grand River Territory, Scotland, Ontario, Canada, N0E 1R0

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 10

**Name** DONALD HERBERT MILES HILL  
**Address for Service** 226 Mohawk Road, R1, Wilsonville, Ontario, Canada, NOE  
1Z0  
**Resident Canadian** Yes  
**Date Began** March 13, 2018

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 Officer(s)**

**Name** DONALD HERBERT MILES HILL  
**Position** President  
**Address for Service** 226 Mohawk Road, R1, Wilsonville, Ontario, Canada, N0E 1Z0  
**Date Began** March 13, 2018

**Name** DONALD HERBERT MILES HILL  
**Position** Secretary  
**Address for Service** 226 Mohawk Road, R1, Wilsonville, Ontario, Canada, N0E 1Z0  
**Date Began** March 13, 2018

**Name** DONALD HERBERT MILES HILL  
**Position** Treasurer  
**Address for Service** 226 Mohawk Road, R1, Wilsonville, Ontario, Canada, N0E 1Z0  
**Date Began** March 13, 2018

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

*V. Quintanilla W.*

Director/Registrar

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**Corporate Name History**

**Name**

2496750 ONTARIO INC.

**Effective Date**

December 17, 2015

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

*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.

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

*V. Quintanilla W.*

Director/Registrar

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### Expired or Cancelled Business Names

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

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*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.

## Document List

Filing Name	Effective Date
Annual Return - 2021 PAF: Donald Herbert Miles HILL	November 22, 2022
Annual Return - 2020 PAF: Donald Herbert Miles HILL	November 22, 2022
Annual Return - 2019 PAF: Donald Herbert Miles HILL	November 22, 2022
Annual Return - 2018 PAF: Donald Herbert Miles HILL	November 22, 2022
Annual Return - 2017 PAF: Donald Herbert Miles HILL	November 22, 2022
Annual Return - 2016 PAF: Donald Herbert Miles HILL	November 22, 2022
CIA - Notice of Change PAF: Donald Herbert Miles HILL	November 21, 2022
Archive Document Package	September 27, 2022
CIA - Notice of Change PAF: DONALD HERBERT MILES HILL - DIRECTOR	March 27, 2018
CIA - Notice of Change PAF: GLENN PAGE - DIRECTOR	February 22, 2016
CIA - Initial Return PAF: GLENN PAGE - DIRECTOR	February 22, 2016
CIA - Initial Return PAF: GLENN PAGE - DIRECTOR	January 27, 2016
BCA - Articles of Incorporation	December 17, 2015

All "PAF" (person authorizing filing) information is displayed exactly as recorded in the Ontario Business Registry. Where PAF is

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

*V. Quintanilla W.*

Director/Registrar

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not shown against a document, the information has not been recorded in the Ontario Business Registry.

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.

This is Exhibit "I" of  
the Affidavit of Scott Hill  
Sworn before me this 27<sup>th</sup> day of January, 2023

A handwritten signature in blue ink, appearing to read "Samuel Hill", is written above a horizontal line.

---

A Commissioner, etc.

# LARA Corporations Online Filing System

Department of Licensing and Regulatory Affairs

**ID Number:** 802575022

[Request certificate](#)

[Return to Results](#)

[New search](#)

**Summary for:** OTE USA LLC

**The name of the DOMESTIC LIMITED LIABILITY COMPANY:** OTE USA LLC

**Entity type:** DOMESTIC LIMITED LIABILITY COMPANY

**Identification Number:** 802575022

**Date of Organization in Michigan:** 12/22/2020

**Purpose:** All Purpose Clause

**Term:** Perpetual

**The name and address of the Resident Agent:**

Resident Agent Name: THE CORPORATION COMPANY  
Street Address: 40600 ANN ARBOR ROAD EAST  
Apt/Suite/Other: SUITE 201  
City: PLYMOUTH State: MI Zip Code: 48170-4675

**Registered Office Mailing address:**

P.O. Box or Street Address: 40600 ANN ARBOR ROAD EAST  
Apt/Suite/Other: SUITE 201  
City: PLYMOUTH State: MI Zip Code: 48170-4675

**Act Formed Under:** 023-1993 Michigan Limited Liability Company Act

**Acts Subject To:** 023-1993 Michigan Limited Liability Company Act

**Managed By:**

Managers

**View filings for this business entity:**

- ALL FILINGS
- ANNUAL REPORT/ANNUAL STATEMENTS
- CERTIFICATE OF CORRECTION
- CERTIFICATE OF CHANGE OF REGISTERED OFFICE AND/OR RESIDENT AGENT
- RESIGNATION OF RESIDENT AGENT
- CERTIFICATE OF ASSUMED NAME

[View filings](#)

**Comments or notes associated with this business entity:**



[LARA FOIA Process](#)   [Transparency](#)   [Office of Regulatory Reinvention](#)   [State Web Sites](#)

[Michigan.gov Home](#)   [ADA](#)   [Michigan News](#)   [Policies](#)

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# LARA Corporations Online Filing System

Department of Licensing and Regulatory Affairs

**ID Number:** 802575019

[Request certificate](#)

[Return to Results](#)

[New search](#)

**Summary for:** OT ENERGY INC.

**The name of the DOMESTIC PROFIT CORPORATION:** OT ENERGY INC.

**Entity type:** DOMESTIC PROFIT CORPORATION

**Identification Number:** 802575019

**Date of Incorporation in Michigan:** 12/22/2020

**Purpose:** All Purpose Clause

**Term:** Perpetual

**Most Recent Annual Report:**

**Most Recent Annual Report with Officers & Directors:**

**The name and address of the Resident Agent:**

Resident Agent Name: THE CORPORATION COMPANY  
Street Address: 40600 ANN ARBOR ROAD EAST  
Apt/Suite/Other: SUITE 201  
City: PLYMOUTH State: MI Zip Code: 48170-4675

**Registered Office Mailing address:**

P.O. Box or Street Address: 40600 ANN ARBOR ROAD EAST  
Apt/Suite/Other: SUITE 201  
City: PLYMOUTH State: MI Zip Code: 48170-4675

**Act Formed Under:** 284-1972 Business Corporation Act

**Acts Subject To:** 284-1972 Business Corporation Act

**Total Authorized Shares:** 60,000

**Written Consent**

**View filings for this business entity:**

- ALL FILINGS
- ANNUAL REPORT/ANNUAL STATEMENTS
- ARTICLES OF INCORPORATION
- RESTATED ARTICLES OF INCORPORATION
- RESTATED ARTICLES OF INCORPORATION
- RESTATED ARTICLES OF INCORPORATION

[View filings](#)

**Comments or notes associated with this business entity:**

[LARA FOIA Process](#)   [Transparency](#)   [Office of Regulatory Reinvention](#)   [State Web Sites](#)

[Michigan.gov Home](#)   [ADA](#)   [Michigan News](#)   [Policies](#)

This is Exhibit "J" of  
the Affidavit of Scott Hill  
Sworn before me this 27<sup>th</sup> day of January, 2023

A handwritten signature in blue ink, appearing to read "Samantha Hill".

---

A Commissioner, etc.

THIS LEASE is made this 19<sup>th</sup> day of February, 2020.

BETWEEN:

Tom Maracle

(collectively referred to herein as the "Landlord")

- and -

Original Traders Energy Limited Partnership

(the "Tenant")

WHEREAS:

1. Tom Maracle is the owner of the lands described in schedule 1 (the "Premises");
2. The Landlord has agreed to lease the Premises to the Tenant on the terms and conditions hereinafter set forth.

NOW THEREFORE THIS LEASE WITNESSES that in consideration of the covenants contained herein, the parties hereto hereby agree as follows:

#### ARTICLE 1 - GENERAL CONTRACT PROVISIONS

##### 1.1 Definitions - Deal Terms

When used in this Lease the following words or expressions have the meaning hereinafter set forth:

**"Additional Basic Rent"** is the monthly amount payable in addition to the Basic Rent equal to the amount set out in section 3.2, which shall be exempt from HST and due within fifteen (15) Business Days of the end of the previous calendar month.

**"Additional Rent"** is all other actual charges payable with respect to the premises, for which invoices are provided, including all utility costs, repairs, lighting requirements, maintenance and taxes, which shall be exempt from HST.

**"Basic Rent"** is the monthly rent, which shall be exempt from HST equal to the amount set out in section 3.1.

**"Business"** means the Tenant's development and operation of a Blending Site for fuel distribution.

**"Deposit"** is the sum of \$1,000.00 which the Landlord acknowledges having received to be applied against the Rent first accruing due hereunder.

**“Permitted Use”** is for the Tenant to build a Blending Site for fuel distribution and for no other purpose.

**“Renewal Period”** is the period of one (1) year commencing on the day immediately following the expiry of the Term.

**“Term”** is the period of twenty (20) years commencing on the Commencement Date subject to renewal as herein set out. If the Commencement Date does not fall on the first day of a month, the Term shall be extended by the number of days in such partial month.

## 1.2 Definitions - Standard

When used in this Lease the following words or expressions have the meaning hereinafter set forth:

**“Architect”** is the architect, professional engineer or surveyor used by the Tenant from time to time.

**“Business Day”** is every day except Saturday, Sunday and statutory holidays.

**“Commencement Date”** is the date that is the earlier of (a) January 31, 2020 and (b) the day that the Tenant occupies the Premises.

**“Environmental Laws”** means all applicable federal, provincial and local laws, by-laws including; without limitation, Mohawks of the Bay of Quinte (“MBQ”) laws and MBQ by-laws, and regulations, ordinances and orders in force now or at any time hereafter, pertaining to the environmental protection of the Premises and the regulation or carrying on of the Business. “Environmental Laws” shall include any applicable standard, guideline or policy for the prevention or remediation of a Hazardous Substance.

**“Hazardous Substances”** are any substance, or material that is or becomes prohibited, controlled or regulated under any Environmental Laws, including without limiting the generality of the foregoing, any paints, solvents, PCB’s, asbestos, contaminants, pollutants, dangerous substances, toxic substances, designated substances, controlled products, wastes, hazardous materials, dangerous goods or petroleum, its derivatives, by-products or other hydrocarbons, fumes, acids, alkali, toxic chemicals in liquid, gaseous or solid form or Microbial Matter.

**“Initiating Party”** is defined in section 1.22.

**“Landlord’s Work”** is the following:

- (a) Approval – the Landlord shall secure MBQ Band Council approvals for the Business, with the support of the Tenant;
- (b) Clearing - The Landlord shall clear the Premises of all trees and organic matters;
- (c) Installation – the Landlord shall install perimeter fencing to isolate Lots 11 and 12 of the Premises; and

- (d) Preparation – The Landlord shall prepare the Premises to underside of asphalt design subbase as per the Tenant’s design build requirements to be supplied by May 1, 2020.

“**Lease Year**” is the period of 12 months commencing on the Commencement Date and on each anniversary of it.

“**Microbial Matter**” is fungi or bacterial matter which reproduces through the release of spores or the splitting of cells, including but not limited to mould, mildew and viruses, whether or not such Microbial Matter is living, that causes a risk or may cause a risk to human health or damage to the Premises.

“**Permitted Encumbrances**” are all mortgages of the Landlord’s interest in the Premises, restrictions, covenants, agreements, easements, encroachments, reservations, rights-of-way, limitations and other matters presently registered against title to the Premises and any similar matters that may be registered in the future provided such further matters do not materially adversely impair the use of the Premises for the Permitted Use.

“**Person**”, according to the context, includes any individual, corporation, firm, partnership or other entity, any group of persons, corporations, firms, partnerships or other entities, or any combination thereof.

“**Prime Rate**” is the annual rate of interest announced by The Royal Bank of Canada from time to time as a reference rate for establishing interest rates charged on Canadian dollar loans.

“**Release**” has the meaning contained in the Environmental Laws and includes, without limitation, any release, spill, emission, leak, pumping, injection, abandonment, deposit, disposal, discharge, dispersal, leaching, migration, pouring, emptying, escape, dumping, spraying, burying, incinerating, seeping or placing of Hazardous Substances, including the movement of Hazardous Substances through, on, under or in the air, soil, subsurface strata, surface water or groundwater.

“**Remediate**” means the treatment, excavation, removal or disposal of any part or parts of the Premises in order to remove Hazardous Substances therefrom in accordance with the Environmental Laws and Remediation has a corresponding meaning.

“**Renewal Terms and Conditions**” are the same terms and conditions as provided for in this Lease, with the right to renew annually after the Term. The Basic Rent for the Renewal Period shall be the rental rate at the greater of the rental rate during the last year of the Term or the expiring Renewal Period, if applicable and the current market rate at the commencement of the Renewal Period for premises comparable in quality, size and location, all leasing factors being considered. In the event that the Tenant and the Landlord are unable to agree on such market rate within ninety (90) days following the delivery by the Tenant to the Landlord of notice of its intention to exercise its option to renew, then such current market rate shall be determined in accordance with section 3.4.

**“Rent”** is Basic Rent, Additional Basic Rent, Additional Rent and any other amounts payable by the Tenant pursuant to this Lease.

**“Responding Party”** is defined in section 1.22

**“Stipulated Rate of Interest”** is the annual interest rate that is five percentage points (5%) in excess of the Prime Rate.

**“Tenant’s Work”** is defined in section 2.5<sub>2</sub>

**“Transfer”** is: (i) an assignment of this Lease in whole or in part including an assignment by operation of law, (ii) a sublease of all or any material part of the Premises; (iii) a parting with or sharing of possession of all or part of the Premises, (iv) if the Tenant is a corporation or trust, a transfer or issue by sale, bequest, inheritance, operation of law or other disposition, or by subscription of all or part of the shares or units of the Tenant which results in a change in the effective control of the Tenant, (v) any transaction by which any right of use or occupancy of all or any part of the Premises is conferred upon anyone, (vi) any mortgage, charge or encumbrance of this Lease or the Premises or any part thereof, or other arrangement under which either this Lease or the Premises becomes security for any indebtedness or other obligations; and (vii) any transaction or occurrence whatsoever which has changed or might change the identity of the Person or Persons having lawful use or occupancy of any part of the Premises. **“Transferor”** means the Person or Persons who is or will be making a Transfer and **“Transferee”** means the Person to whom a Transfer is or is to be made (it being understood that for a Transfer described in (iv) above the Transferor is the Person that has effective voting control before the Transfer and the Transferee is the Person that has effective voting control after the Transfer).

**“Unavoidable Delay”** is any delay by a party in the performance of its obligation under this Lease caused in whole or in part by any acts of God, strikes, lockouts or other industrial disturbances, acts of public enemies, sabotage, war, blockades, insurrections, riots, epidemics, washouts, nuclear and radiation activity or fallout, arrests, civil disturbances, explosions, breakage of or accident to machinery, any legislative, administrative or judicial action which has been resisted in good faith by all reasonable legal means, any act, omission or event, whether of the kind herein enumerated or otherwise, not within the control of such party, and which, by the exercise of control of such party, could not have been prevented, but lack of funds on the part of such party shall not constitute an Unavoidable Delay.

### 1.3 Net Lease

It is intended that this Lease is a completely carefree net lease to the Landlord, except as expressly herein set out, and that during the Term the Landlord is not responsible for any costs, charges, expenses and outlays of any nature whatsoever arising from or relating to the Premises, or the use and occupancy thereof, or the contents thereof or the business carried on therein, and the Tenant shall pay all charges, impositions, costs and expenses of every nature and kind, extraordinary as well as ordinary and foreseen as well as unforeseen, relating to the Premises, the use and occupancy thereof, the contents thereof, and the business carried on therein, except as expressly herein set out.



#### **1.4 Heading**

The headings introducing sections and articles in this Lease are inserted for convenience of reference only and in no way define, limit, construe or describe the scope or intent of such sections or articles.

#### **1.5 Extended Meanings**

The words "hereof", "herein", "hereunder" and similar expressions used in any section or subsection of this Lease relate to the whole of this Lease and not to that section or subsection only, unless otherwise expressly provided. The use of the neuter singular pronoun to refer to any party is deemed a proper reference even though the party is an individual, a partnership, a corporation or a group of two or more individuals, partnerships or corporations. The necessary grammatical changes required to make the provisions of this Lease apply in the plural sense where there is more than one Landlord or Tenant or other party and to either corporations, associations, partnerships, or individuals, males or females, shall in all instances be assumed as though in each case fully expressed. If the Tenant consists of more than one Person, the covenants of the Tenant shall be deemed to be joint and several covenants of each such Person. If the Tenant is a partnership each person who is presently a member of such partnership, and each Person who becomes a member of any successor partnership, shall be and continue to be liable jointly and severally for the performance of this Lease, whether or not such Person ceases to be a member of such partnership or successor partnership.

#### **1.6 Partial Invalidity**

(a) If for any reason any term, covenant or condition of this Lease, or the application thereof to any Person or circumstance, is to any extent held or rendered invalid, unenforceable or illegal, then such term, covenant or condition:

- (i) is deemed to be independent of the remainder of this Lease and to be severable and divisible therefrom and its invalidity, unenforceability or illegality shall be deemed not to affect, impair or invalidate the remainder of this Lease or any part thereof; and
- (ii) continues to be applicable to and enforceable to the fullest extent permitted by law except to the extent to which it has been held or rendered invalid, unenforceable or illegal.

#### **1.7 Entire Agreement**

This Lease sets forth all the covenants, promises, agreements, conditions and understandings between the Landlord and the Tenant concerning the Premises and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than are herein set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Lease shall be binding unless in writing and signed by the parties to be bound thereby.

## **1.8 Governing Law**

The Lease shall be governed by and construed in accordance with the laws of the MBQ and the laws of the Province of Ontario and Canada, as applicable. Should there be a conflict between the laws of any of the following, the MBQ, the Province of Ontario and Canada, the laws of the MBQ shall prevail. For greater certainty, nothing in this Agreement shall be, or deemed to be, an acknowledgement, agreement or consent by any Party that such Party is governed by or subject to such laws or has attorned to such jurisdiction except with respect to the determination and enforcement of such Parties' rights under this Lease.

## **1.9 Time of the Essence**

Time is of the essence of this Lease and of every part hereof.

## **1.10 Overholding - No Tacit Renewal**

If the Tenant remains in possession of the Premises after the end of the Term with the consent of the Landlord but without having exercised its option to renew (where applicable) or executed and delivered a new lease, there is no tacit or implied renewal of this Lease and the Term hereby granted notwithstanding any statutory provisions or legal presumption to the contrary, and the Tenant shall be deemed to be occupying the Premises as a Tenant from month-to-month at a monthly Basic Rent payable in advance on the first day of each month equal to 100% of the monthly amount of Basic Rent payable during the last month of the Term or Renewal Period, if any, as the case may be, and otherwise upon the same terms, covenants and conditions as are set forth in this Lease (including the payment of all Additional Rent), so far as these are applicable to a monthly tenancy.

## **1.11 Successors**

All rights and liabilities herein granted to or imposed upon the respective parties hereto extend to and bind the respective successors and assigns of each party hereto. No rights, however, shall enure to the benefit of any Transferee of the Tenant unless the Transfer to such Transferee is permitted under the terms of this Lease.

## **1.12 Waiver**

The waiver by the Landlord of any breach of any term, covenant or condition herein contained is not deemed to be a waiver of such term, covenant or condition or of any subsequent breach of the same or of any other term, covenant or condition herein contained. The subsequent acceptance of Rent hereunder by the Landlord is deemed not to be a waiver of any preceding breach by the Tenant of any term, covenant or condition of this Lease, regardless of the Landlord's knowledge of such preceding breach at the time of acceptance of such Rent. No term, covenant or condition of this Lease is deemed to have been waived by the Landlord unless such waiver is in writing by the Landlord.

### 1.13 Accord and Satisfaction

(a) No payment by the Tenant or receipt by the Landlord of a lesser amount than the Rent herein stipulated is deemed to be other than on account of the earliest stipulated Rent, nor is any endorsement or statement on any cheque or any letter accompanying any cheque or payment as Rent deemed an acknowledgment of full payment or an accord and satisfaction, and the Landlord may accept and cash such cheque or payment without prejudice to the Landlord's right to recover the balance of such Rent or pursue any other remedy provided in this Lease.

(b) No receipt of monies by the Landlord from the Tenant after the termination of this Lease in any lawful manner shall re-instate, continue or extend the Term or Renewal Period, if any, or affect any notice previously given to the Tenant, or operate as a waiver of the right of the Landlord to enforce the payment of Rent then due or thereafter falling due, or operate as a waiver of the right of the Landlord to recover possession of the Premises by proper suit, action, proceedings or other remedy, it being agreed that, after the service of notice to terminate this Lease and the expiration of the time therein specified, and after the commencement of any suit, action, proceeding or other remedy, or after a final order or judgment for possession of the Premises, the Landlord may demand, receive and collect any monies due or thereafter falling due without in any manner affecting such notice, suit, action, proceeding, order or judgment; and any and all such monies so collected shall be deemed payments on account of the use and occupation of the Premises or, at the election of the Landlord, on account of the Tenant's liability hereunder.

### 1.14 Notices

Any notice, demand, request or other instrument which may be or is required to be given by this Lease to one of the parties shall be in writing and delivered by courier or email to the address indicated below for that party:

(a) if to the Landlord:

(b) Tom Maracle

728 Ridge Road  
Tyendinaga Territory  
ON K0K 1X0

with a copy to such other Person or at such other address as the Landlord designates by written notice; and

(c) if to the Tenant:

Original Traders Energy Limited Partnership  
7331 Indian Line Road  
Wilsonville, ON  
N0E 1Z0  
Attention: Glenn Page, President

glenn.page@originaltradersenergy.com

Any party may at any time give notice in writing to the other party of any change of address of the party giving such notice, and from and after the giving of such notice, the address therein specified is deemed to be the address of such party for the giving of notices hereunder.

Any written communication as aforesaid shall be deemed to have been given or made on the day which it was delivered or sent as aforesaid if it is received at or before 5:00 p.m. MBQ time on the day in question or, if such day is not a Business Day or if such written communication is received after 5:00 p.m. MBQ time, then the written communication shall be deemed to have been given or made on the next following Business Day.

#### **1.15 Registration**

This Lease shall not be registered by the Landlord or the Tenant in the Indian Land Registry, as it is not a lease entered into pursuant to the *Indian Act*, R.S.C. 1985, c. I-5.

#### **1.16 Quiet Enjoyment**

If the Tenant pays the Rent and other sums herein provided when due, and punctually observes and performs all of the terms, covenants and conditions on the Tenant's part to be observed and performed hereunder, the Tenant shall peaceably and quietly hold and enjoy the Premises for the Term hereby demised without hindrance or interruption by the Landlord or any other Person lawfully claiming by, through or under the Landlord subject, nevertheless, to the terms, covenants and conditions of this Lease.

#### **1.17 Unavoidable Delay**

If either party shall be delayed or hindered in or prevented from the performance of any covenant, agreement, work, service, or other act required under this Lease to be performed by such party (except for the payment of Rent), and such delay or hindrance is due to Unavoidable Delay, the performance of any covenant, agreement, work, service, or other act shall be excused for the period of delay and the period for the performance of the same shall be extended by such period.

#### **1.18 Amendments and Supplementary Lease Provisions**

This Lease shall not be modified or amended except by an instrument in writing of equal formality herewith and signed by the parties hereto or by their permitted successors or assigns.

#### **1.19 Schedules**

The following Schedules form a part of this Lease:

Schedule 1 - Legal description of the Premises

### **1.20 No Partnership**

Notwithstanding anything contained in this Lease it is expressly understood that the Landlord shall not be construed or held to be a partner or associate of or joint venturer with the Tenant in the ownership or conduct or operation of the Business or Premises. The relationship between the parties hereto is and shall at all times remain that of landlord and tenant.

### **1.21 Delivery of Certificates**

The Landlord and the Tenant will, at any time and from time to time, upon the reasonable request of the other party, execute, acknowledge and deliver to the other party without cost a certificate certifying:

- (a) that this Lease is unmodified and in full force and effect (or, if there has been any modification, that this Lease is in full force and effect as so modified and stating such modification);
- (b) the dates, if any, to which Rent has been paid;
- (c) whether there are any existing defaults by the other party to the knowledge of the party making such certification specifying the nature of such defaults, if any; and
- (d) such other matters as may be reasonably requested.

Any such certificate may be relied upon by any party to whom such certificate is directed.

### **1.22 Arbitration**

Whenever any arbitration is permitted or required hereunder, arbitration proceedings shall be commenced by a party desiring arbitration (the "**Initiating Party**") giving notice to the other party entitled to participate in the arbitration proceedings (the "**Responding Party**") specifying the matter to be arbitrated and requesting an arbitration thereof. In the event that the Initiating Party and Responding Party are unable to agree upon an arbitration procedure within fifteen (15) days after delivery of such notice, the Initiating Party shall, by written notice to the Responding party, designate an arbitrator. The Responding Party shall, within fifteen (15) days thereafter, be entitled to appoint an arbitrator by written notice to the Initiating Party, and the two (2) arbitrators so appointed shall thereupon meet and select a third arbitrator acceptable to both. In the event that the Responding Party fails to appoint an arbitrator within the time limit aforesaid and deliver notice thereof to the Initiating Party, then the arbitration shall proceed before the arbitrator appointed by the Initiating Party who shall act as sole arbitrator. In the event that the two (2) arbitrators so appointed are unable to agree upon a third arbitrator, then the Initiating Party shall be entitled to make application pursuant to the Arbitration Act (as amended, re-enacted or replaced, from time to time), for selection of a third arbitrator, and the provisions of the Arbitrations Act shall govern such selection.

The resultant arbitration panel shall thereupon proceed to hear the submissions of the parties and shall render a decision within thirty (30) days after the appointment of the third

arbitrator. The decision of a majority of the arbitration panel shall be deemed to be the decision of the arbitration panel, and such decision shall be final and binding upon the parties and not subject to appeal. The arbitration panel shall have the authority to assess the costs of the arbitration panel against either or both of the parties; provided, however, that each party shall bear its own witness and counsel fees.

### **1.23 Cost of Landlord's consents**

Whenever any approval, consent, execution of documents or any other act or action whatsoever is required or requested from the Landlord by the Tenant hereunder, any and all costs, including reasonable legal fees, incurred by the Landlord shall be at the expense of the Tenant and shall be payable by the Tenant by way of additional rent hereunder.

## **ARTICLE 2 - DEMISE AND WORK**

### **2.1 Demise**

The Landlord, in consideration of the rents, covenants and agreements hereinafter reserved and contained on the part of the Tenant to be paid, observed and performed, does demise and lease unto the Tenant the Premises and all rights and appurtenances thereunto appertaining subject to the Permitted Encumbrances.

### **2.2 Term**

The Tenant shall have and hold the Premises for the Term subject to the terms and conditions of this Lease.

### **2.3 Renewal**

The Tenant may renew/extend the Term for the Renewal Periods which shall be on the Renewal Terms and Conditions. To exercise this right, the Tenant must give written notice to the Landlord not less than six (6) months prior to the expiry of the original Term or the expiring Renewal Period. Either party may terminate this Lease at the end of the Term or the end of any Renewal Period upon six (6) weeks prior notice, prior to the expiry of the Term or any Renewal Period.

### **2.4 Landlord's Work**

The Landlord shall undertake the Landlord's Work in a good workmanlike manner with all due dispatch in accordance with all applicable laws as soon as commercially reasonable and not later than May 1, 2020 subject to the terms hereof.

### **2.5 Tenant's Work**

The Tenant shall be responsible for the following:

- (a) Provide all necessary business plan and design information to the Landlord for approval by MBQ Chief and Council;

- (b) Provide full grading and under asphalt design excavation needs to the Landlord by January 30,2020;
- (c) Payment of hydro, water and sewage connection costs;
- (d) Building costs, equipment costs and all other capital required to develop the Business on the Premises;
- (e) Security for the Premises throughout the Term;
- (f) All lighting requirements;
- (g) All monthly utility costs throughout the Term;
- (h) Engineering costs prior to the Effective Date of the Lease;
- (i) Environmental consultations if required;
- (j) Hire Buildall to do the site preparation work to have the site ready to a level grade as more particularly described in schedule 2 attached at the cost of the Tenant and in addition work with Buildall, a business owned by Tom Maracle during the build process to utilize Buildall's resources as needed;
- (k) Develop report of activity to satisfy documentation of monthly Additional Rent; and
- (l) Maintain insurance policies as set out in section 6.1.

All such work (the "**Tenant's Work**") shall be undertaken in accordance with the terms hereof and in accordance with all applicable laws and regulations.

### ARTICLE 3 - RENT

#### 3.1 Rent

The Tenant shall pay to the Landlord during the Term in advance of the first day of each month a fixed monthly amount (the "**Basic Rent**") equal to the sum of Two Thousand, Two Hundred and Eighty dollars (\$2,280.00). If the Commencement Date is a date other than the first day of a month, the Tenant shall pay on such date the rent for such partial month pro-rated on a daily basis.

#### 3.2 Additional Basic Rent

The Tenant shall pay One Cent (\$.01) per litre of fuel shipped from the Premises per calendar month within fifteen (15) Business Days of the end of the previous calendar month (the "**Additional Basic Rent**") for the duration of the Term. Along with the Additional Basic Rent, the Tenant shall provide a monthly activity report to the Landlord, which shall show the Tenant's

invoices for all fuel shipped from the Premises for the preceding calendar month excluding only fuel sold and delivered to Green Energy.

### **3.3 Additional Rent**

All other actual charges payable with respect to the Premises, for which invoices are provided, including all utility costs, repairs, lighting requirements, maintenance and taxes, which shall be exempt from HST, shall be payable by the Tenant as "Additional Rent". In addition the Tenant shall pay directly any other actual charges payable with respect to the Premises.

### **3.4 Rent Increases**

- (a) For each successive Lease Year commencing on the anniversary of the Commencement Date, any increases to the Basic Rent payable by the Tenant as provided for under paragraph 3.1 shall be as agreed upon between the Landlord and the Tenant and, failing agreement within thirty (30) days after the commencement of the then current Lease Year, the Basic Rent shall increase annually by the same percentage increase as the increase in the Commercial Price Index for Canada (all items) ("CPI")
- (b) There shall be no increases to the Additional Basic Rent rate of one cent (\$0.01) per litre for the duration of the Term until such time as the price per litre exceeds the price per litre at the Commencement Date by more than 50% when the one cent shall then increase annually at the increase in CPI .

### **3.4 Payment of Rent**

All payments made to the Landlord shall be made in lawful money of Canada and shall be paid to the Landlord at the Landlord's address for service of notices or to such other party and/or to such other address as the Landlord may from time to time designate in writing to the Tenant. All Rent shall be paid without prior demand, set off or deduction.

## **ARTICLE 4 - USE AND OCCUPANCY**

### **4.1 Use**

The Premises may be used by the Tenant only for the Permitted Use. In conducting the Tenant's Business on the Premises, the Tenant shall conform to all applicable laws, regulations and licensing requirements. The Tenant shall not apply for any amendments to any official plans, band by-laws, regulations or restrictions governing the Premises which could reasonably be said to have the effect of materially lessening the value of the Premises.

### **4.2 Improvements on Premises**

Other than completion of the Tenant's Work, as set out in section 2.5, the Tenant shall not be entitled at any time to construct, renovate, alter, expand, replace, demolish all or any part of a building or buildings upon the Premises without the Landlord's prior written consent which may not be unreasonably withheld.



#### **4.3 Easements and Agreements**

The Tenant shall comply with all covenants and restrictions that may run with or attach to the Premises including the obligations under the Permitted Encumbrances.

#### **4.4 Surrender of Possession**

At the expiration or other termination of the Lease, the Tenant will surrender to the Landlord the Premises in good and substantial order and repair. The Tenant shall remove from the Premises immediately prior to the expiration of the Lease all items owned by the Tenant or by others and remove all debris.

#### **4.5 Construction Liens**

If at any time during the Term any liens of mechanics, labourers or material men shall be filed against the Landlord's interest in the Premises or any part thereof, except for any liens which have resulted from any action of the Landlord, the Tenant shall, at its expense, cause such liens to be discharged by payment, bonding or otherwise, within thirty (30) days after the Tenant receives notice that any such liens were filed. The Tenant shall also defend for the Landlord, at the Tenant's expense, any action, suit or proceeding which may be brought on for the enforcement of any such lien (except for any such lien as may result from any action of the Landlord) and shall pay damages and satisfy and discharge any judgment entered in such action, suit or proceeding and save the Landlord harmless from any liability, claim or damages and expenses (including reasonable legal fees) resulting therefrom. If the Tenant fails to obtain the discharge, as aforesaid, of any such lien, the Landlord may procure the discharge thereof by bonding or payment or otherwise (regardless of the validity of such lien), and all costs and expenses (including reasonable legal fees) to which the Landlord may be put in obtaining such discharge shall be paid by the Tenant to the Landlord as Rent, including interest on any amounts so paid or incurred by the Landlord calculated at the Stipulated Rate of Interest from the date of payment by the Landlord to the date of repayment by the Tenant.

#### **4.6 Encumbrances**

The Tenant shall not create any mortgage, security interest, or any other encumbrance whatsoever against the Premises, including without limitation, in respect of the Tenant's Work, nor shall the Tenant encumber the Lease in any manner whatsoever. If any encumbrance of any kind, including an encumbrance arising as a result of any dealings between the Tenant and a third party(s) shall at any time be filed against the Premises, the Tenant shall cause the same to be discharged within thirty (30) days after same is brought to the attention of the Tenant. If the Tenant shall fail to discharge such encumbrance within such period then in addition to any other right or remedy of the Landlord, the Landlord may, but shall not be obligated to, institute such action as may be necessary to discharge the said encumbrance. All costs and expenses incurred by the Landlord in this regard, including legal fees on a solicitor and client basis, shall be repaid by the Tenant to the Landlord on demand and shall be added as Rent.

#### 4.7 Maintenance

The Tenant shall, at its own expense, maintain the Premises in good and clean order and condition and shall promptly make all necessary or appropriate repairs. The Tenant shall carry out such maintenance and repair in accordance with all applicable laws, regulations and licensing requirements. The Landlord shall not be required to maintain, alter or repair the Premises or any part thereof in any way, except as provided herein, and the Tenant expressly waives the right to make any such repairs at the expense of the Landlord which may be provided for in any law now in effect or hereinafter enacted.

### ARTICLE 5 - FINANCING

#### 5.1 Equipment

The Landlord acknowledges that some of the equipment, fixtures and furniture (collectively designated herein as "**Trade Equipment**"), now or hereafter to be installed by the Tenant in and used by the Tenant upon the Premises, may or will be directly financed by a lender or owned by an equipment rental company ("**Equipment Lessor**") and leased to the Tenant either directly from the Equipment Lessor or by way of equipment sublease or assignment of equipment lease from an equipment sublessor, and the Landlord hereby agrees to recognize the rights therein of any such lender or Equipment Lessor or equipment sublessor (or assignee). The Landlord agrees that all such items of financed or leased Trade Equipment installed or to be installed on the real property constituting the Premises shall be and remain personal property and not real property, notwithstanding the fact that the same may be nailed or screwed or otherwise attached or affixed to such real property, and further agrees to recognize the rights therein of any such lender or Equipment Lessor or equipment sublessor (or assignee). The Tenant shall have the right at any time to remove or replace any and all such financed or leased Trade Equipment regardless of whether annexed or attached to the Premises, and to the extent of their respective interests therein, such lender or Equipment Lessor or equipment sublessor (or assignee) shall also have such a right. Any damage to the Premises caused by such a removal shall be repaired by and at the expense of the Tenant or other party removing it. The Landlord waives any claim arising by reason of any Landlord's lien or otherwise with respect to the financed or leased Trade Equipment or to Trade Equipment upon which the Tenant has granted a security interest to a bona fide lender, and agrees that any such lender or Equipment Lessor or equipment sublessor (or assignee) may remove and dispose of the same without reference to, and free and clear of, any or other demand of the Landlord, provided that said disposal or sale shall not be made on the Premises.

### ARTICLE 6 - INSURANCE

#### 6.1 Tenant's Insurance

- (a) The Tenant shall carry, at its cost, comprehensive environmental and general liability insurance, which coverage shall include the Business operations conducted by the Tenant and any other person on the Premises. Such policies shall be written on a comprehensive basis with coverage for any one occurrence or claim of not less than five million dollars (\$5,000,000).

- (b) The Tenant shall carry, at its cost "All Risks" insurance upon property of every description and kind owned by the Tenant on the Premises, for which the Tenant is legally liable, or which is installed by or on behalf of the Tenant on the Premises, including, without limitation, stock in trade, furniture, equipment, Trade Equipment, in an amount not less than the full replacement cost thereof from time to time.
- (c) The Tenant shall carry, at its cost, pollution liability insurance covering spills on, in or under the Premises in an amount not less than five million dollars (\$5,000,000.00) per occurrence.

## **6.2 Policy Requirements**

Each policy of insurance taken out by the Tenant in section 6.1 shall be:

- (a) in such form and on such terms as are satisfactory to the Landlord; and
- (b) include the Landlord as additional named insureds, as their respective interests may appear.

## **6.3 Certificates**

The Tenant shall furnish the Landlord with certificates showing the insurance required under section 6.1 to be in effect. All such insurance shall be at the cost and expense of the Tenant. Such certificates shall include a provision for thirty (30) days' advance written notice by the insurer to the Landlord and any mortgagee in the event of any pending change or cancellation of such insurance. If the Tenant shall fail to maintain such insurance, the Landlord may at its election procure the same, adding the premium cost to the Rent next due. The payment by the Landlord of any such premium shall not be deemed to waive or release the default of the Tenant in the payment thereof.

## **6.4 Tenant to Rebuild**

Subject to the provisions of section 8.4, if, during the Term, any building or improvement upon the Premises is damaged or destroyed, the Tenant shall, at its cost, repair or restore the same to a state equal to or better than the condition of such building or improvement immediately prior to the casualty. All insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration. If the insurance proceeds shall be insufficient for said purpose, the Tenant shall pay such deficiency.

## **6.5 Damage During Last Year of Term**

If, during the last year of the Term or any Renewal Period, any improvements on the Premises are damaged so that the cost of repairing or replacing the same shall equal or exceed twenty percent (20%) of the fair market value of the improvements as reasonably estimated by the Landlord's Architect, the Tenant shall have the option, upon written notice given within thirty (30) days after such casualty:

- (a) to repair or restore such damaged improvements; or
- (b) to terminate this Lease by written notice thereof to the Landlord. The Tenant's option to terminate shall be conditional upon the Tenant's doing such work so as to restore the Premises to their condition prior the Commencement Date. The Tenant shall assign to the Landlord the Tenant's rights to the insurance proceeds payable on account of such casualty free and clear of any encumbrances or other claims. This Lease shall terminate upon receipt by the Landlord of said notice, good and valid assignment of insurance proceeds and payment by the Tenant to the Landlord of all rents and other amounts owing to the Landlord under this Lease to the date of termination and completion of such work. The Premises and all improvements remaining on the Premises shall be surrendered to the Landlord.

#### **6.6 No Termination**

Subject to the provisions of section 6.5, no destruction of or damage to the Premises or other personal property on the Premises or any part thereof by fire or other casualty whatsoever, whether such damage or destruction be partial or total, shall permit the Tenant to surrender or terminate this Lease or relieve the Tenant from its obligation to pay in full the Rent and other sums and charges payable by the Tenant hereunder or from any other obligation under this Lease.

### **ARTICLE 7 - ASSIGNMENT**

#### **7.1 No Assignment by Tenant**

The Tenant acknowledges and agrees that the tenancy/leasehold interest of the Tenant under the Lease are, in effect, personal to the Tenant. The use permitted hereunder is, in the sole discretion of the Landlord. As such, the Tenant covenants and agrees that it shall not assign, transfer, sublet or otherwise part with possession of the Premises in whole or in part, in any manner whatsoever without the prior written consent of the Landlord, which consent may be arbitrarily and unreasonably withheld in the Landlord's sole and absolute discretion.

#### **7.2 Landlord Assignment**

If the Landlord assigns its rights as Landlord of the Premises, to any assignee, the Landlord shall without further written notice or otherwise be relieved of any of its covenants or obligations hereunder.

#### **7.3 Parties Bound**

The Lease and anything herein contained shall extend to, bind and enure to the benefit of the successors and assigns of each of the parties hereto, subject to the consent of the Landlord being obtained, as provided in the Lease, to any assignment or sublease by the Tenant, and where there is more than one (1) Landlord or Tenant, or where the Landlord or Tenant is a male, female, a partnership or a corporation, the provisions herein shall be read with all grammatical changes thereby rendered necessary. All covenants herein contained shall be deemed joint and

several and all rights and powers reserved to the Landlord may be exercised either by the Landlord or its agents or representatives.

#### **7.4 Transfer of Reversionary Interest by Landlord**

Nothing in this Lease prohibits or restricts the Landlord from selling, assigning, transferring, mortgaging, encumbering or otherwise dealing with the whole or any part of its reversionary interest in the Premises (subject to this Lease) and all of its rights, title and interest in this Lease.

### **ARTICLE 8 - DEFAULT**

#### **8.1 Default**

Notwithstanding anything contained in any present or future laws to the contrary, if and whenever:

- (a) the Tenant fails to pay any Rent, Additional Rent or any other sums due hereunder on the day or dates appointed for the payment thereof (provided the Landlord first gives five (5) days' written notice to the Tenant of any such failure); or
- (b) the Tenant fails to observe or perform any other of the terms, covenants or conditions of this Lease to be observed or performed by the Tenant (other than the terms, covenants or conditions set out below in subparagraphs (c) to (j) inclusive, for which no notice shall be required) provided the Landlord first gives the Tenant fourteen (14) days, or such shorter period of time as is otherwise provided herein, notice of any such failure to perform and the Tenant, within such period, fails to commence diligently and thereafter to proceed diligently and continuously to cure any such failure to perform; or
- (c) the Tenant or any Person occupying the Premises or any part thereof or any licensee, concessionaire or franchisee operating a business in the Premises becomes bankrupt or takes benefit of any act now or hereafter in force for bankrupt debtors or files any proposal or makes any assignment for the benefit of creditors or any arrangement or compromise; or
- (d) a receiver or a receiver and manager is appointed for all or a portion of the Tenant's property or any such occupant's, licensee's, concessionaire's or franchisee's property and such appointment is not discharged within twenty (20) days; or
- (e) any steps are taken or any action or proceedings are instituted by the Tenant or by any other party, including, without limitation, any court or governmental body of competent jurisdiction for the dissolution, winding-up or liquidation of the Tenant or its assets other than pursuant to a corporate reorganization; or

- (f) the Tenant makes a sale in bulk of any of its assets, wherever situated (other than a bulk sale made to a Transferee permitted under this Lease); or
- (g) the Tenant sells or disposes of its goods, trade equipment, equipment or chattels or removes or commences, attempts or threatens to remove them from the Premises so that in the Landlord's opinion there would not in the event of such sale, disposal or removal be sufficient goods of the Tenant on the Premises subject to distress to satisfy all Rent due or accruing hereunder for a period of at least six (6) months; or
- (h) the Tenant effects a Transfer that is not permitted by this Lease; or
- (i) this Lease or any of the Tenant's assets on the Premises are taken under any writ of execution, chattel mortgage, charge, debenture or other security instrument; or
- (j) re-entry is permitted under any other terms of this Lease;

then, in addition to any and all other rights, including the rights referred to herein, the full amount of the current month's instalment of Rent, including, without limitation, the payment of Additional Rent and any other payments required to be made monthly hereunder, together with the next three (3) months' instalments of Rent, Additional Rent and the aggregate of such payments for the next three (3) months, all of which shall be deemed to be accruing due on a day-to-day basis, shall immediately become due and payable as accelerated Rent, and the Landlord may immediately distrain for the same, together with any Rent arrears then unpaid. For the purposes of this section 8.1, Additional Rent shall be calculated based on a monthly average of the Additional Rent paid in the six (6) months preceding a default arising under section 8.1.

## **8.2 Re-Entry**

In addition to any other rights or remedies the Landlord has pursuant to this Lease or at law, and in the event of any default listed in section 8.1 herein, the Landlord has the immediate right of re-entry upon the Premises and it may repossess the Premises and enjoy them as of its former estate, and the Tenant hereby consents that the Landlord may expel all Persons and remove all property from the Premises. Such property may be removed and sold or disposed of by the Landlord by public auction or otherwise, and either in bulk or by individual item, all as the Landlord in its sole discretion may decide (and the Tenant acknowledges and agrees that the proceeds of such sale or disposition shall be applied by the Landlord in its sole discretion) or may be stored in a public warehouse or elsewhere at the cost and for the account of the Tenant, all without service of notice or resort to legal process and without the Landlord being considered guilty of trespass or becoming liable for any loss or damage which may be occasioned thereby or for any claim for damages. The Tenant hereby irrevocably waives the benefit of any present or future laws which in any way may limit or diminish the Landlord's right to terminate this Lease or re-enter into possession of the Premises in pursuance of its rights or remedies as set forth in this Lease. Notwithstanding any other provisions of this Lease, the Landlord shall have an affirmative obligation to mitigate its damages and relet the Premises.

### **8.3 Termination**

Except for the terms, covenants or conditions set out above in subparagraphs 8.1 (c) to (j) inclusive, for which no notice shall be required, in the event of default by the Tenant or at any time during the continuance of such default, in addition to (and not by way of limitation of) any other remedies the Landlord may have under this Lease or at law, the Landlord may elect to terminate this Lease by giving fourteen (14) days written notice thereof to the Tenant, and upon such termination, the Landlord may then or at any time thereafter:

- (a) re-enter and take possession of the Premises or any part thereof and may expel or remove the Tenant and any other Person from the Premises without service of notice or resort to any legal proceedings and without being deemed guilty of any trespass or becoming liable for any loss or damage which may be occasioned thereby; or
- (b) bring an action for summary possession of the Premises or any part thereof as provided by law;

all without prejudice to any other remedy or right of action which the Landlord may have for Rent or other breach of this Lease.

### **8.4 Survival of Rights**

Notwithstanding any termination of this Lease or re-entry upon the Premises by the Landlord and without limiting the Landlord's right to other damages, the Tenant shall remain liable to the Landlord for damages for breach of the Tenant's covenants under this Lease.

### **8.5 No Waiver after Settlement**

If proceedings shall at any time be commenced by the Landlord for recovery of possession and compromise or settlement shall be effected, either before or after judgment whereby the Tenant shall be permitted to retain possession of the Premises, then such proceedings shall not constitute a waiver of any covenant or condition of this Lease or of any subsequent breach thereof or a release of any liability or obligation of the Tenant therefor.

### **8.6 Surrender of Possession**

If the Lease is terminated in any manner, the Premises shall be placed by the Tenant in the same condition as that in which the Tenant has agreed to surrender them at the expiration of the Term, but subject, if then applicable, to the effects of any prior expropriation.

### **8.7 Costs of Completion**

In the event of the termination of the Lease for default of the Tenant hereunder prior to the completion by the Tenant of repair or restoration of damage or destruction of any buildings and improvements by reason of fire or other casualty, the Landlord's damages hereunder shall include, in any case in which the Tenant was obligated under the Lease to make and complete

such repair or restoration, the amount of any excess of the cost of completion of such repair or restoration over the net fire insurance proceeds available to the Landlord.

### **8.8 Remedies Cumulative**

In the event of default, the Landlord's remedies under this Lease shall be cumulative and no remedy expressly provided for herein shall be deemed to exclude any other remedy allowed by law or equity or statute or otherwise or by other provisions of this Lease.

### **8.9 Waiver of Distress**

The Landlord may distrain and the Tenant waives and renounces the benefit of any present or future statute taking away or limiting the Landlord's right of distress and covenants and agrees that, notwithstanding any such statute, except as provided in section 5.1, none of the goods and chattels of the Tenant on the Premises at any time during the Term shall be exempt from levy by distress for Rent, Additional Rent or any other charges.

## **ARTICLE 9 – ENVIRONMENTAL**

### **9.1 Environmental Compliance**

- (a) The Tenant shall conduct all of its operations on the Premises in strict compliance with all Environmental Laws and shall not cause or permit to be caused by any act, practice or omission or by negligence or otherwise any adverse effect, as such Terms may be defined or applied under Environmental Laws from time to time. Without limiting the generality of the foregoing, the Tenant shall obtain all licences, permits, registrations, certificates of approvals and approvals required under all Environmental Laws for its Business on the Premises.
- (b) The Tenant shall provide copies to the Landlord of all licences, permits, certificates of approval, approvals and generator registrations required hereunder within ten (10) days of demand therefor by the Landlord, provided that receipt or review of same by the Landlord shall not obligate the Landlord to take any action hereunder with respect to any conditions on the Premises.
- (c) The Tenant shall comply with all applicable laws including, without limitation, ensuring adequate secondary containment for any spills is constructed around any above-ground or underground storage tanks required for the Tenant's Business on the Premises.
- (d) The Tenant shall notify the Landlord promptly of any event or occurrence that has given, or is likely to give, rise to a report, order, inquiry investigation under Environmental Laws or a violation of Environmental Laws, including any Release, spill, emission, leaking, pumping, injection, deposit, disposal, discharge, dispersal, leaching or migration of a Hazardous Substance into, on, under, from or about the Premises, air and surface and ground water.



- (c) The Tenant shall not permit any waste to accumulate at the Premises and shall ensure all such waste is removed by a licensed hauler in compliance with all Environmental Laws.
- (f) The Tenant shall not cause or permit any environmental damage or Microbial Matter, in, under, on or about the Premises.

## 9.2 Remediation

- (a) The Tenant shall prior to the Commencement Date, at the Tenant's expense cause a Phase II environmental, and/or industrial hygiene and/or human health site assessment (the "ESA") of the Premises to be conducted by an environmental or human health consultant, as the case may be (the "Consultant") selected by the Tenant, which shall include, inspection of the Premises and the operations of the Tenant, drilling bore holes, monitoring wells or test pits and testing samples therefrom. The parties acknowledge that the Tenant has commissioned an ESA for the Premises prior to the Commencement Date which shall form a baseline of the environmental status of the Premises. The Landlord shall retain and bear all liability relating to such status as at the Commencement Date. The Landlord represents and warrants to the best of its knowledge that the Premises comply with all Environmental Laws as at the Commencement Date. The ESA shall be addressed to both the Landlord and the Tenant.
- (b) After the Commencement the Tenant shall, on thirty (30) days notice, if reasonably required, and at the end of the Term at the Tenant's expense, cause a Phase II environmental, and/or industrial hygiene and/or human health site assessment (the "ESA") of the Premises to be conducted by an environmental or human health consultant, as the case may be (the "Consultant") selected by the Landlord which shall include, inspection of the Premises and the operations of the Tenant, drilling bore holes, monitoring wells or test pits and testing samples therefrom, reviewing records maintained by government officials in relation to compliance of the Tenant with Environmental Laws, reviewing records maintained by the Tenant and interviewing the Tenant's employees. The Tenant shall forthwith perform all Remediation and decommissioning recommended by the ESA to restore the Premises to the condition which existed on the Commencement Date. The ESA shall be addressed to both the Landlord and the Tenant.
- (c) Prior to the expiration of the Term, the Tenant shall restore the Premises to the condition which existed on the Commencement Date including the removal of its Trade Equipment. Without limiting the generality of the foregoing, prior to the expiration of the Term, the Tenant shall Remediate and decommission the Premises so that no Hazardous Substances remain therein, thereon or thereunder in excess of the applicable standards for industrial/commercial sites in a full depth clean-up under applicable Environmental Laws and the Tenant shall reconstruct and restore all parts of the Premises necessitated in connection therewith.

**9.3 Environmental Indemnity**

The Tenant shall indemnify and save harmless the Landlord from and against any and all losses, claims, actions, damages, liabilities, penalties and expenses (including consultants' fees and legal fees on a solicitor and client basis) in connection with loss of life, personal injury, damage to property, Remediation required, compliance with government orders or Environmental Laws, or any other loss or injury arising from a breach of the Tenant of its obligations hereunder or upon the presence, release or discharge of Hazardous Substances into, under, upon, from or about the Premises. The indemnity shall survive the expiry or termination of this Lease.

IN WITNESS WHEREOF the parties hereto have executed this Lease.

**Tom Maracle**

Per: 

Title: Landlord

**Original Traders Energy Limited Partnership by its  
general partner, Original Traders Energy Ltd.**

Per: 

Name: Glenn Page

Title: President

I have authority to bind the general partner

**Schedule 1**

*(The following table contains the information required by the Act. The table is presented in a simplified format for clarity. The actual document contains a detailed table with multiple columns and rows of data.)*

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**ADDENDUM**

**TO THE LEASE MADE ON FEBRUARY 18, 2020**

**BETWEEN:**

Tom Maracle

(referred to herein as the “**Landlord**”)

- and -

Original Traders Energy Limited Partnership

(the “**Tenant**”)

(collectively referred to herein as the “**Parties**”)

**WHEREAS:**

1. The Landlord and the Tenant signed a lease on February 18, 2020, in respect of two properties located in the Tyendinaga Industrial Park on Tyendinaga Mohawk Territory (the “**Premises**”);
2. The Landlord is the owner of the Premises pursuant to Certificates of Possession numbers 403018621 and 403018622;
3. Pursuant to the lease dated February 18, 2020, the Tenant occupies the Premises and operates a blending site for fuel distribution at the Premises;
4. As a result of an oversight, in the version of the lease signed by the Landlord and the Tenant on February 18, 2020, the Schedule 1 of the lease, intended to include the description of the Premises subject to the lease, was left blank;

**NOW THEREFORE** the Parties hereby agree as follows:

1. The legal description of the Premises is as follows:

Lots 11 and 12, Tyendinaga Industrial Park, Tyendinaga Mohawk Territory, as shown on Plan No. 95029, Canada Lands Surveys Record.
2. This Addendum is in force as of the Commencement Date of the lease signed by the Parties on February 18, 2020 (even though this Addendum has been signed subsequent to the Commencement Date).

3. This Addendum forms part of the lease signed by the Parties on February 18, 2020, and the lease signed by the Parties on February 18, 2020 shall be interpreted for all purposes as if the legal description of the Premises set out in section 1 of this Addendum had been included within Schedule 1 of the lease on the date that it was signed by the Parties.

IN WITNESS WHEREOF the Parties hereto have executed this Addendum.

**Tom Maracle**

Per: 

Title: Landlord

Signed this 24 day of September, 2021

**Original Traders Energy Limited Partnership by its  
general partner, Original Traders Energy Ltd.**

Per: 

Name: Glenn Page

Title: President

Signed this 24 day of September, 2021

I have authority to bind the general partner.



# MOHAWKS OF THE BAY OF QUINTE

## KENHTEKE KANYEN'KEHÁ:KA

ADMINISTRATION, 24 Meadow Drive, Tyendinaga Mohawk Territory, ON K0K 1X0  
Phone 613-396-3424 Fax 613-396-3627

### MOHAWK COUNCIL RESOLUTION

Chronological No.:	2021/22-040
File Reference:	

**NOTE:** The words "From our First Nations Funds, "Capital" or "Revenue", whichever is the case, must appear in all resolutions requesting expenditures from First Nations Funds.

THE COUNCIL OF THE: <b>MOHAWKS OF THE BAY OF QUINTE</b>	Current Capital Balance	\$
DISTRICT <b>ONTARIO REGION SOUTH</b>	Committed	\$
PROVINCE <b>ONTARIO</b>	Current Revenue Balance	\$
PLACE <b>TYENDINAGA MOHAWK TERRITORY #38</b>	Committed	\$
DATE 1 September 2021 Date Month Year		

**DO HEREBY RESOLVE:**

Moved by: Lynda Leween

Seconded by: Carl E. (Ted) Maracle

WHEREAS the Mohawks of the Bay of Quinte have the existing and inherent right of self-determination, which includes the inherent jurisdiction over their lands, peoples and territory;

AND WHEREAS the Mohawks of the Bay of Quinte have aboriginal and treaty rights, and other rights and freedoms that are recognized and affirmed in the Constitution of Canada, which include the inherent right of self-determination and jurisdiction over their lands, peoples and territory;

AND WHEREAS the Tyendinaga Mohawk Council is the community government within the Tyendinaga Mohawk Territory and has inherent jurisdiction to make laws, regulations and policies to meet the needs and concerns of the Mohawks of the Bay of Quinte;

AND WHEREAS the Tyendinaga Mohawk Council intends to preserve the cultural, political and economic integrity of the Mohawk Territory and community of Tyendinaga;

AND WHEREAS the Tyendinaga Mohawk Council is striving to create an environment conducive to the establishment of economic development within the Tyendinaga Mohawk Territory;

A quorum for this First Nation  
Consists of 3  
Council Members

Chief R. Donald Maracle

Councillor Josh Hill

Councillor Lynda Leween

Councillor Carl E. (Ted) Maracle

**FOR DEPARTMENT USE ONLY**

1. First Nation Code	2. COMPUTER BALANCES		3. Expenditure	4. Authority Indian Act See	5. Source of Funds <input type="checkbox"/> Capital <input type="checkbox"/> Revenue
	A. Capital \$	B. Revenue \$			
6. Recommended			Approved		
Date	Recommending Officer		Date	Approving Officer	



# MOHAWKS OF THE BAY OF QUINTE

## KENHTEKE KANYEN'KEHÁ:KA

ADMINISTRATION, 24 Meadow Drive, Tyendinaga Mohawk Territory, ON K0K 1X0  
Phone 613-396-3424 Fax 613-396-3627

### MOHAWK COUNCIL RESOLUTION

Chronological No.:	2021/22-040
File Reference:	

**NOTE:** The words "From our First Nations Funds, "Capital" or "Revenue", whichever is the case, must appear in all resolutions requesting expenditures from First Nations Funds.

THE COUNCIL OF THE: <b>MOHAWKS OF THE BAY OF QUINTE</b>	Current Capital Balance	\$
DISTRICT <b>ONTARIO REGION SOUTH</b>	Committed	\$
PROVINCE <b>ONTARIO</b>	Current Revenue Balance	\$
PLACE <b>TYENDINAGA MOHAWK TERRITORY #38</b>	Committed	\$
DATE 1 September 2021 Date Month Year		

AND WHEREAS as part of creating an environment conducive to economic development, the Mohawks of the Bay of Quinte businesses wish to enter into contractual agreements with product suppliers;

AND WHEREAS as a condition of the contract, the supplier requires a Resolution from the Council to enter the "Territory";

AND WHEREAS Tom Maracle and his associated company Original Traders Energy, has requested that Council pass this Resolution and agrees to its content.

THEREFORE BE IT RESOLVED THAT the Tyendinaga Mohawk Council hereby grants The Royal Bank of Canada and its agents and assigns the right to enter upon the Tyendinaga Mohawk Territory for the specific purpose of the contract, with Tom Maracle and his associated company Original Traders Energy to access any assets directly related to the aforesaid contract between Tom Maracle and his associated company Original Traders Energy and The Royal Bank of Canada.

AND BE IT FURTHER RESOLVED THAT this right of access shall not be withdrawn without the prior written agreement of both The Royal Bank of Canada or its assigns and the Tyendinaga Mohawk Council

Carried.

A quorum for this First Nation Consists of 3 Council Members
--

*Donald Maracle*  
Chief R. Donald Maracle

*Josh Hill*  
Councillor Josh Hill

*Lynda Leween*  
Councillor Lynda Leween

*Carl E. Maracle*  
Councillor Carl E. (Ted) Maracle

#### FOR DEPARTMENT USE ONLY

1. First Nation Code	2. COMPUTER BALANCES		3. Expenditure	4. Authority Indian Act See	5. Source of Funds <input type="checkbox"/> Capital <input type="checkbox"/> Revenue
	A. Capital \$	B. Revenue \$			
6. Recommended			Approved		
Date	Recommending Officer		Date	Approving Officer	

**CERTIFICATE AS TO AGREEMENTS**

**TO** ALL LAWYERS, Gowling WLG (Canada) LLP

**AND TO** ROYAL BANK OF CANADA ("RBC")

**RE** Credit facilities established in favour of Original Traders Energy LP (the "**Borrower**") pursuant to a loan agreement dated July 6, 2021 between Royal Bank of Canada (the "**Lender**"), as lender, and the Borrower, as borrower, (as the same may be amended, modified, supplemented, extended, renewed, restated or replaced from time to time, the "**Credit Agreement**")

**DATE** October 15, 2021

I, Glen Page, President of Original Traders Energy Ltd., hereby certify on behalf of Original Traders Energy LP, in my capacity as an officer of its general partner, and not in my personal capacity, as follows:

1. Annexed hereto as Schedule "B" is a true and complete copy of each of the documents referred to in Schedule "A" attached hereto (each individually, a "**Document**").
2. Each Document is in full force and effect as of the date hereof.
3. There have been no further amendments to, alterations of, termination of or variations in or to any Document.
4. There is no other agreement, instrument, document or understanding which supersedes any Document.

I make these representations, warranties and certifications knowing that the Lender will be acting in reliance thereon in continuing to extend the credit facilities to the borrowers pursuant to the Credit Agreement.

DATED as of the date first written above.

  
Name: \_\_\_\_\_



**SCHEDULE "A"**  
**LIST OF DOCUMENTS**

1. Lease dated February 18, 2020 between Tom Maracle, as landlord, and Original Traders Energy Limited Partnership, as tenant, (the "Lease")
2. Addendum to the Lease made on February 18, 2020

A handwritten signature in black ink, appearing to be the initials 'RBC' or similar, located in the lower right quadrant of the page.