

Court File No. CV-23-00693758-00CL

**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

**MOTION RECORD OF THE MOVING PARTY
(Motion for Order re CCAA Plan, and other relief)**

November 30, 2023

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TO: THE SERVICE LIST

Court File No. CV-23-00693758-00CL

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TAB 1

Court File No. CV-23-00693758-00CL

**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.
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TRADERS ENERGY LTD.** and **2496750 ONTARIO INC.**

Applicants

**NOTICE OF MOTION
(Motion for Order re CCAA Plan, and other relief)**

OTE USA LLC (“OTE USA”), a creditor, will make a motion to a judge of the Commercial List on a date and at a time to be set at the hearing scheduled for November 30, 2023, or as soon after that time as the Court may direct, for an order, among other things, providing relief in furtherance of the plan of compromise or arrangement contemplated by the detailed redacted CCAA plan term sheet marked as Appendix “A” to this Notice of Motion (the “**CCAA Plan Term Sheet**”), among: Original Traders Energy Ltd. (“OTE GP”), OTE Limited Partnership (“OTE LP” and together with OTE GP, the “**OTE LP Group**”), as debtors; GEN 7 Fuel LP or its nominee to be formed, National Spirit Petroleum LP, as the sponsor of the plan (the “**Plan Sponsor**”); and OTE USA and the OTE LP Group’s other creditors, as creditors (the “**CCAA Plan**”).

PROPOSED METHOD OF HEARING: The motion will be heard as directed by the court at the time of scheduling.

THE MOTION IS FOR:

1. An order, if necessary, abridging the time for service, validating the method of service, and dispensing with further service of this Notice of Motion and Motion Record;
2. An order, substantially in the form appended to the Motion Record:
 - a. providing that OTE USA and the Plan Sponsor be authorized and empowered to do the following, on such terms as the Court may direct:
 - i. engage with creditors of the OTE LP Group, including Ontario's Ministry of Finance, to discuss their support for the CCAA Plan;
 - ii. engage with licensing authorities for the purpose of reinstating the licenses of the OTE LP Group and/or negotiating new licenses in support of the CCAA Plan;
 - b. directing the Monitor to:
 - i. accept a deposit from the Plan Sponsor in the amount of CAD \$1 million, as satisfactory security for its obligations contemplated by the CCAA Plan Term Sheet, to be held in trust on the terms set forth in the CCAA Plan Term Sheet, pending consideration of the CCAA Plan by creditors and this Court;
 - ii. forthwith provide OTE USA and the Plan Sponsor with such non-privileged information as they may reasonably require for the purpose of allowing it to formulate the Plan, including the information listed in Appendix "B" to this Notice of Motion;
 - c. directing that pending further order of the Court, the OTE LP Group shall not

dissipate, alienate or otherwise deal with their assets, other than in the ordinary course of its operations, and other than the assets referenced in Schedule 1 to the order of the Court dated October 11, 2022, without prejudice to the ability of OTE LP to repay the debt owing to the Royal Bank of Canada (“**RBC**”) (the OTE LP Group’s secured bank lender);

- d. directing OTE USA to return to Court following 30 days to report on its progress in respect of the CCAA Plan;
 - e. providing for the appointment of a mediator to:
 - i. assist OTE USA and the Monitor to resolve any future issues with respect to disclosure of information; and,
 - ii. to assist stakeholders in their efforts to negotiate a comprehensive resolution of the claims and counterclaims raised in these proceedings, if possible; and,
3. Such further and other relief as this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

BACKGROUND

1. On January 30, 2023, Justice Osborne granted an initial order (the “**Initial Order**”) which, among other things, provided protection to the OTE Group (as defined therein) under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36. On February 9, 2023, Justice Osborne granted an Amended and Restated Initial Order.
2. OTE USA and the Plan Sponsor have developed a plan to restructure the OTE LP Group and provide a mechanism to settle all litigation in respect of the OTE LP Group in the current CCAA proceedings, in a manner which, among other things, maximizes recoveries,

revives and preserves the going concern value of the businesses for the benefit of stakeholders, maintains critical relationships with key suppliers and regulators across Canada and the United States, and will preserve the employment of some of OTE LP Group's employees.

CCAA Plan

3. The effect of the CCAA Plan would be to restructure the OTE LP Group and allow it to exit from these proceedings by the sale of its property, assets and undertakings (the "Business") to the Plan Sponsor (the "Sale"), in exchange for immediate consideration from the Plan Sponsors and other contributors to the Plan in the form of:
 - a. cash and the resolution of litigation so as to free-up additional cash for distribution to creditors; and,
 - b. a secured promissory note, which will be repaid out of future cash flow of the Business, whose operations will be restarted through the injection of new operating financing from the Plan Sponsor in exchange for equity.
4. A plan of compromise and arrangement that revives and preserves the going concern value of OTE LP's business and that provides an opportunity to resolve all of the claims and counterclaims raised in these proceedings is in the best interest of the OTE LP Group and its stakeholders, and is consistent with the scheme and objectives of the CCAA.
5. If approved, the Plan will permit the OTE Group to exit the CCAA proceedings.

Discussions with Stakeholders

6. OTE USA proposes to engage with other creditors for the purpose of soliciting support for the CCAA Plan and/or negotiating its terms to the extent necessary.

7. The Monitor has objected to such discussions on the basis that they are a breach of the non-disclosure agreement signed by OTE USA (the “NDA”).
8. The NDA does not govern discussions with third parties in respect of the CCAA Plan because the NDA governs transactions in respect of assets that are listed in Schedule 1 of the bid process approved by this Court by order dated October 12, 2023, and the CCAA Plan is not in respect of those assets.
9. Alternatively, if the NDA does apply:
 - a. there is no information that is proprietary or prejudicial to OTE LP in in the CCAA Plan Term Sheet or the proposed CCAA Plan; and,
 - b. it is unreasonable and contrary to the purpose of these proceedings and the scheme of the statute, and therefore public policy, to use the terms of the NDA to preclude consultation among OTE USA and other creditors with a view to compromise and/or arrangement of claims—creditors should have the opportunity to consider available options to maximize their recoveries, including the CCAA Plan.
10. The proposed authorization order will allow OTE Group’s creditors to consider the CCAA Plan and propose modifications or amendments to the CCAA Plan, thereby increasing the likelihood of compromise or arrangement of claims.
11. The proposed authorization order is fair and reasonable in the circumstances.

Receipt of Deposit and Production of Information

12. As a sign of good faith the Plan Sponsor is prepared to provide a deposit of CAD \$1

million (the “**Deposit**”), but requires confirmation that the Deposit will be received on the terms contemplated by the CCAA Plan Term Sheet; that is, it will be deposited into an interest bearing trust account, and returned to the Plan Sponsor, without set off or other deduction, in the event that the CCAA Plan is rejected by creditors or the court or is otherwise not implemented for reasons other than a breach by the Plan Sponsor of its obligations under the Plan or any corollary agreements.

13. The Monitor has failed or refused to confirm that it is prepared to receive the Deposit on the foregoing terms, nor has it offered alternative terms.
14. OTE USA has asked the Monitor to provide it with information reasonably necessary to the completion of its due diligence in respect of the CCAA Plan. The Monitor has refused these requests.

Maintenance of Status Quo

15. It is fair and reasonable that, while OTE USA and/or the Plan Sponsor invest the time and resources necessary for negotiations with creditors and the drafting of the comprehensive Plan, the OTE LP Group shall not dissipate, alienate or otherwise deal with the assets forming the subject matter of the ongoing discussions and negotiations.
16. The proposed relief is subject to a requirement that OTE USA return to court to report on its progress by December 22, 2023 or the first available date thereafter. This will ensure that there is no undue or excessive delay in the CCAA proceedings.
17. The proposed Progress Report Order is fair and reasonable in the circumstances.

Appointment of Mediator

18. The Monitor has:

- a. expressed its unequivocal opposition to the CCAA Plan and to the comprehensive settlement of claims;
- b. failed or refused to provide relevant information in a timely way or at all; and,
- c. has repeatedly ignored overtures from counsel to OTE USA to meet and confer.

19. There is urgency to these proceedings and the Court has limited ability to hear document production disputes;

20. In these circumstances, it is fair and reasonable and consistent with the objectives of these proceedings that a Mediator be appointed to:

- a. mediate disputes with respect to the production of documents;
- b. try to help the parties find common ground in respect of a comprehensive compromise or arrangement on reasonable terms acceptable to the necessary majorities of creditors and the court.

Other Grounds

21. The provisions of the CCAA and the inherent and equitable jurisdiction of this Honourable Court;

22. The *Rules of Civil Procedure* (Ontario), RRO 1990, reg. 194, including, without limitation, rules 1.04, 1.05, 2.03, 16, and 37 thereof;

23. The *Courts of Justice Act*, R.S.O. 1990, c. C. 43, as amended; and

24. Such further and other grounds as counsel may advise and this Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. The affidavit of Brian Page, sworn November 28, 2023;
2. The affidavit of Brian Page, sworn September 22, 2023;
3. Such further and other material as counsel may submit and this court may permit.

November 30, 2023

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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.

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

PROCEEDING COMMENCED AT
TORONTO

NOTICE OF MOTION

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TAB 2

Court File No. CV-23-00693758-00CL

**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.
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Applicants

**ORDER
(Motion for Order re CCAA Plan and Other Relief)**

THIS MOTION, made by the OTE USA LLC (“**OTE USA**”), a creditor, for an order, among other things, providing relief in furtherance of the plan of compromise and arrangement (the “**CCAA Plan**”) contemplated by the detailed CCAA plan term sheet marked as Appendix “A” to this order (the “**CCAA Plan Term Sheet**”), was heard this day by judicial video conference via Zoom in Toronto, Ontario.

ON READING, the Notice of Motion of OTE USA, the Affidavit of Brian Page sworn November 28, 2023, including the exhibits thereto, and [LIST OTHER MATERIALS BEFORE THE COURT], and on hearing the submissions of respective counsel for OTE USA, GEN 7 Fuel LP on behalf of its nominee to be formed, National Spirit Petroleum LP, as the sponsor of the CCAA Plan (the “**Plan Sponsor**”), the Monitor, and such other counsel as shown on the counsel slip, no one else appearing despite the Service List having been duly served as appears from the Affidavit of Service of [X], affirmed, [date], filed [date]:

1. **THIS COURT ORDERS** that the timing and method of service and filing of this motion is hereby abridged and validated such that the motion is properly returnable today and hereby dispenses with further service thereof.

Communications and Production of Information

2. **THIS COURT ORDERS** that OTE USA and the Plan Sponsor are authorized and empowered to:

- a. engage with creditors of the OTE Group to solicit support for the Plan; and,
- b. engage with licensing authorities for the purpose of reinstating its licenses or, alternatively, negotiating new licenses in support of the restructuring contemplated by the CCAA Plan.

3. **THIS COURT ORDERS** that the Monitor shall be given notice of any meetings between (a) OTE USA and/or the Plan Sponsor and (b) creditors, and that the Monitor shall be entitled to observe those meetings.

4. **THIS COURT ORDERS** that the Monitor shall forthwith, provide OTE USA and the Plan Sponsor with such non-privileged information as they may reasonably require for the purpose of allowing them to formulate the CCAA Plan, including the information referenced in the column titled “November 6, 2023” in the list marked as Appendix “B” to this order, and that OTE USA and the Plan Sponsor shall receive this information subject to the terms of the non-disclosure agreement previously executed by them.

5. **THIS COURT ORDERS** OTE USA to return to court on the first available date 30 days after the date of this order, to report on its progress in respect of the CCAA Plan (the “**Progress Report**”).

Maintenance of Status Quo

6. **THIS COURT ORDERS** that pending further order of this Court following receipt of the Progress Report, the OTE Group shall maintain the status quo and shall not, other than in the ordinary course of business, dissipate, alienate or otherwise deal with their assets, other than the assets referenced in Schedule 1 to the order of this Court dated October 11, 2022, and without prejudice to the ability of OTE LP to repay the debt owing to the Royal Bank of Canada.

Appointment of Mediator/Arbitrator

7. **THIS COURT ORDERS** that [mediator to be determined by the Court after OTE USA, the Plan Sponsor, and the Monitor consult] is hereby appointed as an officer of the Court and shall act as a neutral third party (the “**Mediator**”).

8. **THIS COURT ORDERS** that the Mediator’s mandate is to:

- a. mediate all disputes arising from requests for information by OTE USA and the Plan Sponsor in respect of the CCAA Plan;
- b. assist stakeholders in respect of the formulation and negotiation of the CCAA Plan, together with any procedural or substantive matters as may be related thereto, and such other matters as the parties may agree or this Court may direct (the “**Mandate**”).

9. **THIS COURT ORDERS** that in carrying out the Mandate, the Mediator may, among other things:

- a. adopt processes and utilize resources which, in his/her discretion, he/she considers appropriate;
- b. consult with all Persons as the Mediator considers appropriate; and
- c. apply to this Court for advice and directions as, in their discretion, the Mediator

deems necessary.

10. **THIS COURT ORDERS** that the reasonable fees and disbursements of the Mediator in relation to carrying out the Mandate shall be paid by OTE LP on a monthly basis, forthwith upon the rendering of accounts to OTE LP.

11. **THIS COURT ORDERS** that OTE LP is hereby authorized to pay to the Mediator a retainer to be held by the Mediator as security for payment of the Mediator's fees and disbursements outstanding from time to time.

12. **THIS COURT ORDERS** that the Mediator is authorized to take all steps and to do all acts necessary or desirable to carry out the terms of this Order, including dealing with any Court, regulatory body or other government ministry, department or agency, and to take all such steps as are necessary or incidental thereto.

13. **THIS COURT ORDERS** that, in addition to the rights and protections afforded as an officer of this Court, the Mediator shall incur no liability or obligation as a result of his appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on their part. Nothing in this Order shall derogate from the protections afforded a person pursuant to Section 142 of the Courts of Justice Act (Ontario).

Communication and Confidentiality Protocol

14. **THIS COURT ORDERS** that the following communication and confidentiality protocol between the Court, the Mediator and participants in the Mediation Process be and is hereby approved:

- a. the Court and the Mediator may communicate between one another directly to discuss, on an on-going basis, the conduct of the Mediation Process and the

manner in which it will be coordinated with the CCAA Proceedings;

- b. the Court will not disclose to the Mediator how the Court will decide any matter which may come before the Court for determination;
- c. the Mediator will not disclose to the Court the negotiating positions or confidential information of any of the parties in the Mediation Process;
- d. without-prejudice statements, discussions, and offers of any of the parties arising in the course of the Mediation Process shall not be subject to disclosure through discovery or any other process, shall remain confidential, and shall not be referred to in Court and shall not be admissible into evidence for any purpose, including impeaching credibility or to establish the meaning and/or validity of the CCAA Plan or any term thereof, or of any settlement or alleged settlement arising from the Mediation Process; and
- e. any notes, records, statements made, discussions had and recollections of the Mediator or any of his assistants in conducting the Mediation Process shall be confidential and without prejudice and protected from disclosure for all purposes, provided, for the avoidance of doubt, that arbitral decisions and any related reasons of the Mediator may be disclosed, and the Mediator may, in their discretion, disclose information for the purpose of enforcing the confidentiality provisions of this order.

15. **THIS COURT ORDERS** that, following consultation with participants in the mediation, the Mediator may direct such further terms as to confidentiality and use of information exchanged during the mediation, and participants who elect to continue to participate in the mediation shall be bound by those terms.

General

16. **THIS COURT ORDERS** that OTE USA, the Plan Sponsor, and the Monitor may apply to this Court from time to time for directions from this Court with respect to this Order, or for such further order or orders as any of them may consider necessary or desirable to amend, supplement or clarify the terms of this Order.

17. **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, or abroad, to give effect to this Order and to assist 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 as may be necessary or desirable to give effect to this Order, or to assist in carrying out the terms of this Order.

18. **THIS COURT ORDERS** that each of OTE USA, the Plan Sponsor and the Monitor be at liberty and are 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.

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.

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

PROCEEDING COMMENCED AT
TORONTO

ORDER

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Counsel for OTE USA LLC

TAB 3

Court File No. CV-23-00693758-00CL

**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
ORIGINALTRADERS ENERGY LTD. and 2496750 ONTARIO INC.

Applicants

AFFIDAVIT OF BRIAN PAGE

I, Brian Page, of the City of Winnipeg, in the Province of Manitoba, MAKE OATH
AND SAY:

1. I am one of three indirect members, the sole manager and the senior vice president of OTE USA LLC, a Michigan limited liability company ("**OTE USA**"). OTE USA was a supplier of fuel to OTE Limited Partnership ("**OTE LP**"), and is a creditor in these proceedings, having a claim for unpaid fuel supplied to OTE LP in the approximate amount of \$7.3 million. A copy of the Proof of Claim filed by OTE USA in these proceedings is marked as **Exhibit A** to this affidavit. The claim has not been disallowed.
2. By virtue of my offices with OTE USA and its dealings with OTE LP and my other involvement with OTE LP and persons related to it, as detailed below, I have knowledge of the matters to which I depose herein, except for those matters which are expressly

based upon information provided to me by others. Where I refer to such information, I believe it to be true.

A. Overview and Background

3. I am swearing this affidavit in support of a motion for relief in furtherance of the plan of compromise or arrangement contemplated by the detailed redacted CCAA plan term sheet marked as **Exhibit B** to this affidavit (the “**CCAA Plan Term Sheet**”), among: Original Traders Energy Ltd. (“**OTE GP**”), OTE LP (together with OTE GP, the “**OTE LP Group**”), as debtors; GEN 7 Fuel LP or its nominee to be formed, National Spirit Petroleum LP, as the sponsor of the plan (the “**Plan Sponsor**”); and OTE USA and the OTE LP Group’s other creditors, as creditors (the “**CCAA Plan**”).

4. I believe the CCAA Plan will significantly benefit creditors over the alternative of protracted litigation among the OTE LP Group and various contributors to the Plan. The Plan is intended to maximize recoveries to stakeholders of the OTE LP Group.

5. At the outset I believe that it is important to understand that these proceedings have their genesis in a dispute between the limited partners of OTE LP and OTE Logistics LP (“**Logistics LP**”); in particular, on the one side, Miles Hill (“**Miles**”) and Scott Hill (“**Scott**”, and together with Miles, the “**Hills**”), and, on the other side, my brother, Glenn Page (“**Glenn**”). Through these proceedings, the Hills have advanced a number of very serious claims against Glenn and against me and persons and entities related to us, including claims in respect of OTE USA. I believe that these claims are unfounded, and that, in fact, it may be the Hills who have breached their fiduciary duties by prioritizing

their personal agendas over the interests of OTE LP and Logistics LP, and who have, through reckless conduct amounting to gross negligence, and perhaps through wilful misconduct, caused serious damage to those businesses.

6. A detailed recitation of the dispute between Glenn and the Hills can be found on my affidavit sworn on or about September 22, 2023, which has previously been filed with this Court, and on which I rely for the purpose of the motion first referenced above. In summary, over the course of the first half of 2022, the Hills became suspicious that Glenn was taking disproportionate value out of OTE LP. Although Glenn attempted to demonstrate that was not the case, the Hills were not appeased. Moreover, my impression is that the Hills (particularly Miles Hill) felt that even if Glenn's draw from OTE LP and Logistics LP had not exceeded his proportionate entitlement as a limited partner, Glenn was making (and stood to make) more money than the Hills believed to be appropriate. To address this, the Hills took steps to cut Glenn out of the business of OTE LP and to cut both Glenn and myself out of the business of Logistics LP.

7. On or about July 29, 2022 (the "**Takeover Date**"), the Hills used their majority interest to assume control of OTE LP and Logistics LP. That was the last day on which I had access to the banking records of Logistics LP. Thereafter:

- (a) It appears that, for reasons I am unable to explain, the Hills may not have operated the business of OTE LP or Logistics LP, or remitted taxes for these businesses, or did so in a way that gave rise to a justification for these

proceedings, which have resulted in the needless loss and/or destruction of value to the prejudice of creditors, including OTE USA.

- (b) The focus of the proceedings has been Glenn's interest in a boat, which, at different times, has variously been described as a yacht, a luxury yacht, and an Italian yacht, and which has been used to colour Glenn's interest in OTE LP and Logistics LP by suggesting that he was misusing corporate resources. The boat was purchased, however, using the undistributed draws of *8658 Ontario (defined below), the company through which he and his wife, Mandy Cox ("**Mandy**"), hold an interest in OTE LP. I have reviewed the 2019 and 2020 Financial Statements for OTE LP and combined Net Income totaled \$9,990,567. *8658's share would have been over \$3,300,000. I am advised by Glenn that the 2021 financial statements were in the process of being finalized when he was excluded from the business and have yet to be delivered; however, he expects them to show income in excess of \$14 million, in which case *8658's share would be approximately \$4.6 million. The approximate purchase price of the boat was only \$3.8 million, of which approximately \$2.6 million was paid in cash out of *8658's undistributed draws from OTE LP, and \$1.2 million was financed. I am further advised by Glenn that the financed portion has since been paid in full.¹ The boat is a luxury item, to be sure, but well within Glenn's means

¹ I note that Glenn had previously advised me, and I had deposed, that taxes had been paid in respect of those distributions. On further review, it is not clear that taxes were paid in respect of those distributions.

and entitlements relative to his interest in OTE LP and Logistics LP. All of this was explained to the Hills. The use of distributions to pay vendors was normal in the course of business of OTE LP, which included OTE LP paying vendors directly for Scott Hill's house expansion during this period.

8. I am also advised by Glenn that, in 2022, before his exclusion from the business, OTE LP was tracking profits of \$24 million on sales of \$584 million, of which *8658's share alone would have been millions of dollars, and that OTE LP was anticipating the receipt of tens of millions of dollars in tax rebates from the IRS and the State of Michigan (the "**Foreign Tax Rebates**"). It was a very profitable business that, subject to some tax arrears that had developed due to errors attributable to short staffing during that pandemic (when Glenn was excluded from the business premises due to travel restrictions on the Six Nations reserve), OTE was generally meeting its obligations as they came due.

9. Conversely, it appears to me that, after taking control of OTE LP's business, the Hills failed to (or decided not to) remit taxes as required, causing OTE LP's debt to balloon very quickly, considering the volume of fuel being sold. They have also failed to collect (and perhaps claim) the Foreign Tax Rebates.

10. Moreover, since the start of these proceedings and notwithstanding the terms of the Initial Order that directed the continuation of operations in the ordinary course, the Hills appear to me to have withdrawn the customer support of gas stations controlled by them, without making any effort to re-establish dealings with the Gen7 gas stations and OTE USA, so as to make ongoing operations untenable, while consolidating OTE LP's

assets on Scott Hill's property on the Six Nations Reserve where he can exert the greatest leverage over them, and attempting to conceal OTE LP's books from the Monitor. These matters are discussed in greater detail below.

11. Given the historical profitability of its business, OTE USA is of the view that OTE LP should be capable of making a meaningful contribution to the reduction of creditor claims through future operations, and OTE USA is proposing the CCAA Plan detailed in the CCAA Plan Term Sheet as a mechanism to achieve that objective. The CCAA Plan would: settle outstanding litigation on terms favourable to the OTE LP Group and its creditors, including an immediate cash payment and a release of claims to disputed assets under the control of the OTE LP Group; and, restart OTE LP's business (the "**OTE Business**") under the control of the Plan Sponsor with a view to facilitating further payments to creditors out of cash generated by operations.

12. Unfortunately, the Monitor appears focussed on litigation, and has not been facilitative of OTE USA's efforts to advance the CCAA Plan. For example, our first written request to see the claims filed in these proceedings was made on October 12, 2023, and we were not given access to them until November 7, almost a month later. When the Monitor did give us access, it insisted that we attend at its offices in person to review the claims, had set aside only 2 hours for us to do so, would not allow us to take copies, and had someone sit in the meeting room to watch us while we reviewed the claims and took notes. At one point, I had to go to the washroom and the representative from KPMG

stood in the doorway of the meeting room so that he could monitor me going to the washroom while also keeping an eye on our advisor from KSV Advisory Inc. (“**KSV**”).

13. To the contrary, the Monitor is openly opposed to those efforts because the outcome of the CCAA Plan would be to deliver a release to persons who contribute value to the CCAA Plan.

14. In particular, the Monitor is:

- (a) Objecting to any discussions or negotiations in respect of the CCAA Plan Term Sheet between OTE USA and Ontario’s Ministry of Finance (the “**MOF**”) or any of OTE LP’s other creditors; and,
- (b) refusing to provide OTE USA with access to information necessary for the purpose of conducting due diligence in respect of the CCAA Plan.

15. Instead of allowing us to advance the CCAA Plan so that it can be considered by creditors, the Monitor has prevented us from accessing information and stakeholders to advance, finalize and propose the CCAA Plan. We recognize that the Monitor will in due course have the opportunity to report on the CCAA Plan and to present its implications to creditors. Creditors will then be able to consider the CCAA Plan with the benefit of all perspectives.

16. It may also be that, through bi-lateral communication and sharing of information, we may be able to overcome the Monitor’s concerns.

17. Accordingly, OTE USA asks that this court:

- (a) authorize OTE USA to (i) share the CCAA Plan Term Sheet with the MOF and other material creditors, and (ii) engage with those creditors for the purpose of advancing the restructuring objectives of these CCAA proceedings;
- (b) direct the Monitor to share relevant information with OTE USA and the Plan Sponsor so that it can complete its due diligence in respect of the CCAA Plan; and,
- (c) appoint a mediator to help the parties resolve any future issues with respect to documentary disclosure, and to mediate any issues in respect to the CCAA Plan.

B. Withdrawal of Business Support by the Hills

18. In late August of this year, I heard from previous employees and customers of OTE LP and Logistics LP Drivers that they had been told by representatives of OTE LP and Logistics LP that, effective September 15, 2023, substantially all of the remaining business of OTE LP and Logistics LP would be transitioned to their competitors. More specifically:

- (a) all of Logistics LP's truck drivers had received lay-off notices and had been offered jobs with Joseph Haulage Capital Corporation ("**JHCC**"); and,

- (b) all of OTE LP's personnel were going to be laid off effective September 15, 2023, and arrangements had been made to transition the fuel supply business to Parkland Corporation ("**Parkland**").

Counsel to OTE USA wrote to counsel to the Monitor on or about September 1, 2023, to notify them of these events. A copy of this correspondence is marked as **Exhibit C** to this affidavit.

19. The Monitor's counsel responded on or about September 8, 2023, advising that the Monitor was "not aware of any transfer of the ownership of business or assets of the OTE Group in contravention of paragraph 5 of the Initial Order", and that the Monitor had spoken to Scott Hill to ensure that he was aware of his obligations pursuant to the Initial Order. A copy of this correspondence is marked as **Exhibit D** to this affidavit.

20. Counsel to OTE USA also wrote to representatives of Parkland and JHCC to express its concerns. Copies of this correspondence are marked as **Exhibits E** and **F** to this affidavit, respectively. As this time, OTE USA has received a response only from Parkland's counsel, advising that OTE USA has been misinformed in respect of Parkland's dealings with Scott Hill. A copy of the correspondence received from Parkland's counsel is marked as **Exhibit G** to this affidavit.

21. At paragraph 24 of its 5th Report, dated September 28, 2023 (which followed the Fourth report dated July 12, 2023), which was filed in conjunction with and in support of the OTE Group's motion for a sales process, the Monitor disclosed for the first time the "unexpected loss" of "key customers", leading to the development of the "Reduced

Operations Plan" (involving the shuttering of Tyendinaga blending site and the Whitefish blending site, and the transfer of moveable assets to the Six Nations blending site.

22. The Monitor did not initially say precisely when it became aware of the departure of these key customers, nor did it identify the key customers or when they departed.

23. In light of the concerns raised by the conduct described above, Glenn Page and *8658 Ontario brought a motion for the appointment of a Chief Restructuring Officer. The Monitor responded with a proposal to enhance its powers, and in connection with that proposal it delivered a supplement to the Fifth Report in which the Monitor disclosed for the first time that:

- (a) "Miles Hill has previously resigned from his positions and is no longer affiliated with the OTE Group entities" (para 9);
- (b) the "key customers" that had been lost were Miles Hill's two gas stations, and that the Monitor had been advised of this in late July 2023: "In late July 2023, the Monitor was made aware that two customer gas stations related to Miles Hill, a related party, made the decision to discontinue further purchases of fuel from the OTE Group. The loss of these gas stations resulted in a reduction of approximately 30% of the sales volumes." (para 31);
- (c) "In response, the OTE Group, with the assistance of the Monitor, reviewed additional mitigation strategies and scenarios to reduce the cash loss

resulting from the lost sales volumes. Ultimately, a plan was prepared to reduce the scale of operations of the OTE Group." (para 32); and,

- (d) Operations at the Tyendinaga blending Site and Whitefish blending site were discontinued on August 31 and Sept 8, respectively (para 34).

24. I note that, prior to the dispute between the Hills and Glenn, the Gen7 gas stations represented OTE LP's biggest source of revenue, and they are independently capable of sustaining the OTE Business. To my knowledge, nobody approached the Gen7 gas stations to explore the possibility of re-establishing that relationship for the purpose of supporting operations. To the contrary, as indicated above, on the September 8, 2023, the very day that the Whitefish blending site was being closed, the Monitor's counsel was writing to counsel to OTE USA to say that it was not aware of any efforts to transition the business of OTE LP or Logistics LP.

C. Consolidation of Assets and Operations on Scott Hill's Property

25. The Monitor also reported at paragraphs 25 and 26 of its 5th report that the OTE Group's assets and fuel blending operations had been consolidated at OTE LP's blending site on the Six Nations Reserve (the "**Six Nations Blending Site**").

26. The Six Nations Blending Site is located on land held by Scott Hill pursuant to a certificate of possession issued pursuant to the *Indian Act*.

27. I am further advised by Glenn that, unlike all the other limited partners in OTE LP, who paid cash for their limited partnership units, Scott contributed the land on which the

Six Nations Blending Site was subsequently built. In these circumstances, it may be arguable that Scott holds the certificate of possession for the benefit of OTE LP, and OTE LP might be able to obtain an order to that effect. That is not a certain outcome, however. Moreover, I have concerns about the enforceability of a court order on the Six Nations reserve, to the extent that police assistance might be required to enforce the order, as there is a history of significant challenges in obtaining police assistance to enforce certain court orders on the Six Nations reserve.

28. In the circumstances described above, it appears to me that the consolidation of assets and operations on the Six Nations reserve has the effect of giving Scott Hill considerable leverage and a tactical advantage in these proceedings.

29. Conversely, the landlord in respect of the Whitefish blending site is the Atikameksheng Anishnawbek First Nation, which is unrelated to OTE LP and its unit holders. A copy of the lease in respect of that site is attached as **Exhibit H**.

30. Provided that the Whitefish lease is kept in good standing, that site can form the basis of future operations of the OTE Business following the implementation of a CCAA Plan. In the interest of maximizing realizations for the benefit of creditors, therefore, it appears to me to be absolutely critical to the restructuring of the business of OTE LP that the Whitefish lease be maintained.

D. Concealment of OTE LP's Books

31. Throughout these proceedings, the Monitor has repeatedly commented on the absence of accounting information in respect of OTE LP. This has been a point of

contention because Glenn and I believe that the accounting information should be available. Accordingly, on or about October 18, 2023, Glenn reached out to Jeff Lixie, the president of Key Information Technologies (“KIT”), which is the company providing the accounting package used by OTE LP, which is called “Bookworks”. KIT also hosts the data.

32. In response to being asked whether the OTE LP accounts had been made available to the Monitor, Glenn Page was advised by Mr. Lixie that he had been told by both Scott Hill and Sandra Smoke (OTE LP’s bookkeeper) that he was not to share the OTE LP current “Bookworks” accounting files with anyone except Scott Hill or Sandra Smoke, and that under no circumstances was he to share this accounting data or the “Bookworks” file with either KPMG or counsel for the Monitor.

33. This advice tends to corroborate my long-standing concern that the Monitor has been receiving information filtered by Scott Hill or persons under his control, and that this information may have been altered to hide payments to the Hills and/or others.

34. OTE USA’s counsel wrote to the Monitor’s counsel on or about October 18, 2023, to relay the information obtained by Glenn, and to seek confirmation that the Monitor had taken control of the Bookworks accounts. A copy of that correspondence is marked as **Exhibit I** to this affidavit.

35. The Monitor’s counsel initially did not respond to the October 18 correspondence, and counsel to OTE USA followed-up on this and other matters in an email sent November 1, 2023, a copy of which is marked as **Exhibit J** to this affidavit.

36. The Monitor's counsel responded on November 2, 2023. A copy of that correspondence is marked as **Exhibit K** to this affidavit. The Monitor's counsel:

- (a) stated that it reports only to, and takes its directions from, the Court;
- (b) appeared to confirm that the Monitor had been relying on information filtered through Scott Hill and/or others, stating that the "Monitor has had access to the OTE Group's accounting information *through the OTE Group's accounting and finance personnel* since the commencement of the CCAA proceedings" [emphasis mine];
- (c) was critical of Glenn for having spoken directly to Mr. Lixie, without regard to the fact that as of October 18, 2023, six days after the enhancement of its powers, the Monitor had apparently not taken control of the books, and that it had failed to do so in the face of prior concerns expressed by OTE USA regarding Scott Hill's conduct, and in circumstances where KIT had been instructed to withhold the Bookworks information from the Monitor and its counsel; and,
- (d) appeared to down-play the significance of the Bookworks account because it is "merely a ledger-based accounting system".

37. I am not sure what "merely a ledger-based accounting system" means. This is a system in which all accounting transactions should be recorded and is of fundamental importance. Notwithstanding that Bookworks is "merely" a ledger, the books that Scott

Hill was apparently trying to withhold from the Monitor and its counsel are plainly an important, relevant source of information and evidence.

E. The CCAA Plan

38. In light of the circumstances described above, I believe that the Hills, and Scott Hill in particular, have engaged in a strategy to take control of the OTE LP Group's assets and undertakings for relatively little or no consideration. I also believe that it is possible to counter that strategy through the introduction of a plan of compromise or arrangement that would allow the OTE Business to be restructured, restarted and operated in a way that will generate sufficient cash flow to allow for future payments to creditors, and thereby maximize recoveries for creditors.

39. With this in mind, OTE USA has prepared a business plan for the future operation of the OTE Business, premised on future sales to the Gen7 gas stations, which continue to operate profitably independent of OTE LP. Based on that business plan, OTE USA, in consultation with its legal and financial advisors, has prepared the CCAA Plan Term Sheet, proposing a CCAA Plan that is intended to settle all or substantially all claims in respect of the OTE LP Group (the "**Restructuring Proposal**")² in exchange for the following:

² For the avoidance of doubt, the Restructuring Proposal does not include 2496750 Ontario Inc. or OTE Logistics Limited Partnership (together "**OTE Logistics**") or the claims of OTE Logistics' creditors, and the Restructuring Proposal does not affect any of the Property forming the subject matter of the Amended Bid Process approved by order of the Honourable Justice Kimmel dated October 12, 2023 (the "**Bid Process Order**").

- (a) the immediate distribution to creditors of “Initial Plan Consideration”:
comprised of:
- (i) immediate cash consideration of \$3,000,000 to be paid by the Plan Sponsor, comprised of a \$1 million deposit payable forthwith, and \$2 million to be paid on implementation of the CCAA Plan;
 - (ii) the delivery by 2658658 Ontario Inc. (“2658658”) and any other necessary related persons or entities of a release of claims to the proceeds of:
 - (1) the sale of the boat “Cuz We Can”, which I estimate to be approximately \$3 million (the “**Boat Sale Proceeds**”); and,
 - (2) the sale of the following interests in aircraft: (i) a 6.25% undivided fractional aircraft interest in s/n 525B0668, C-FSFO; (ii) a 25.0% undivided fractional aircraft interest in s/n 525B0642, C-GNAS; and, (iii) a 12.5% undivided fractional aircraft interest in Embraer Legacy 450 s/n 55010039, C-GASK, which I estimate to be approximately \$5,000,000 (the “**Plane Sale Proceeds**”); and,
 - (iii) all cash, cash equivalents on hand at OTE LP Group as of the plan implementation date, net of the amount required to pay priority claims;

- (b) future distributions totalling \$10,000,000 in satisfaction of a promissory note, to be delivered by the Plan Sponsor on plan implementation, providing for annual payments equal to the greater of (1) 30% of the free cash generated each year by the OTE Business, and (2) \$1,000,000;
- (c) the option to have OTE USA act as agent for the OTE LP Group (in this capacity, the “**Agent**”) for purposes of pursuing and recovering the Foreign Tax Rebates at a cost equal to 10% of the amount recovered by the Agent (the “**Agent’s Fee**”). The purpose of the Agent’s Fee is to assure creditors of the Agent’s commitment to the collection of the Foreign Tax Rebates, while making payment contingent on recovery (as compared to the option of having the Monitor attempt collection based on an hourly fee payable regardless of outcome). Regardless of which option is selected by creditors, based on my past dealings with U.S. tax authorities and my past discussions with tax professionals at Ernst & Young in relation to unrelated proceedings, I anticipate that the recoverability of the Foreign Tax Rebates will be enhanced by the fact that the OTE Business will be ongoing. The Monitor has not disclosed the status of the Foreign Tax Rebates or provided OTE USA with access to the OTE LP Group’s books and records to quantify and assess the status of the Foreign Tax Rebates independently; and,
- (d) in order to enhance recoveries to arm’s length creditors and having regard to the indirect benefit that they may obtain through the preservation of OTE

Business, OTE USA and entities related to the Plan Sponsor would agree to waive their claims against the OTE LP Group.

40. In exchange for the foregoing consideration, on implementation of the CCAA Plan:

- (a) the Plan Sponsor would acquire all of the property, assets and undertaking of the OTE LP Group (which, as noted in the footnote above, do not include any assets that are subject to the bid process previously approved by this court) on an “as is, where is basis”, free and clear of all claims and encumbrances, and take an assignment of and assume all contracts, leases and (to the extent assignable) permits and licenses of OTE LP Group, pursuant to (i) an approval and vesting order and (ii) an assignment order pursuant to section 11.3 of the CCAA, each in form and substance satisfactory to the plan sponsor and made concurrently with the Court’s order sanctioning the CCAA Plan;
- (b) contributors to the CCAA Plan (including any persons, such as the Hills or other third parties, who elect to make additional contributions on satisfactory terms in future) and persons related to them will receive comprehensive releases in respect of their dealings with the OTE LP Group.

41. The proposed CCAA Plan remains subject to certain due diligence conditions. In this regard, we note that OTE USA and its agents have written to the Monitor on several occasions with various requests for information. A summary of these requests and their relevance to the plan sponsor is marked as **Exhibit L** to this affidavit. OTE USA and the

Plan Sponsor have attempted to refine their information request and, at this time, we are principally concerned with the information requested on November 6, 2023, referenced in the highlighted rows. It may be that through cooperative discussion, the information requests can be further refined.

42. Also marked as exhibits to this affidavit, as indicated below, are copies of the correspondence exchanged among counsel in relation to the requests for information, together with other related email:

- (a) **Exhibit M:** October 12, 2023, email from M. Starnino to R. Sahni;
- (b) **Exhibit N:** October 13, 2023, email from R. Sahni to M. Starnino;
- (c) **Exhibit O:** October 20, 2023 email from J. Berger to R. Sahni;
- (d) **Exhibit P:** October 27, 2023 document request sent to the Monitor by KSV;
- (e) **Exhibit Q:** October 27, 2023 email from M. Starnino to R. Sahni;
- (f) **Exhibit R:** November 1, 2023 email form M. Starnino to R. Sahni;
- (g) **Exhibit S:** November 2, 2023 letter from R. Sahni to M. Starnino;
- (h) **Exhibit T:** November 3, 2023 email from M. Starnino to R. Sahni;
- (i) **Exhibit U:** November 3, 2023 email from D. Lau to M. Starnino;
- (j) **Exhibit V:** November 4, 2023 email from M. Starnino to D. Lau; and

(k) **Exhibit W:** November 6, 2023, letter from M. Starnino to R. Sahni.ss

43. Late on November 8, 2023, in what I regard as a tactical step intended to hinder OTE USA's efforts in respect of the CCAA Plan, the Monitor served a motion asking this court to impose a world-wide Mareva injunction against the assets of Glenn and his wife, Mandy Cox. A copy of the email serving the motion, without enclosures, is marked as **Exhibit X** to this affidavit. The motion served to distract from efforts to finalize the CCAA Plan Term Sheet.

44. A distribution copy of the CCAA Plan Term Sheet was ultimately provided to the Monitor under cover of email from M. Starnino to R. Sahni dated November 16, 2023 (the "**November 16 Email**"), a copy of which (without the enclosure) is marked as **Exhibit Y** to this affidavit. In that correspondence, OTE USA and the Plan Sponsor, among other things:

- (a) offered to provide a \$1 million deposit to the Monitor's counsel as evidence of the seriousness of their intentions, subject to confirmation that the deposit would be held in trust in accordance with the CCAA Plan Term Sheet; and,
- (b) indicated their intention to reach out to creditors to solicit their support for the CCAA Plan Term Sheet.

45. The Monitor's counsel responded to the November 16 Email by the email dated November 16, 2023, marked as **Exhibit Z** to this affidavit. In its response, the Monitor objected to any direct communications between OTE USA and other creditors in respect

of the CCAA Plan Term Sheet on the grounds that doing so would be a breach of ss. 7 and 8 of the Non Disclosure Agreement signed by OTE USA (the “**NDA**”), and that the Monitor “was not in a position to consent to any such meetings in light of the findings of Mr. Justice Osborne in his March 21, 2023 Endorsement and subsequent information obtained and disclosed by the Monitor.” A copy of the NDA is marked as **Exhibit AA** hereto.

46. Mr. Starnino was out of office from November 16 through November 19, and he responded to Mr. Sahni by email dated Monday, November 20, 2023, a copy of which is marked as **Exhibit BB** to this affidavit, suggesting a call to discuss the Monitor’s apparent adversity in respect of the CCAA Plan proposed by OTE USA in the CCAA Plan Term Sheet.

47. Mr. Sahni responded by email dated Tuesday, November 21, 2023, stating, among other things:

In circumstances where there is evidence of fraud and misappropriation of funds from OTE Group entities while Mr. Page was in control of the OTE Group, the Monitor is not in a position to consent to your clients' requests for the purposes of seeking to advance a plan that includes proposed releases of Mr. Page and related companies/persons, as the Monitor does not view that to be in the interests of the OTE Group’s creditors and in fact believes it could be highly prejudicial and detrimental to the interests of creditors and other stakeholders of the OTE Group.

You are of course free to seek further direction of the Court if your clients disagree. If you intend to do so, please provide us and counsel for the OTE Group with full and proper notice in advance.

48. I have difficulty understanding the position taken by the Monitor. The path that the Monitor is pursuing appears to me to favour liquidation and litigation over a favourable going-concern solution.

49. Obviously, if the Monitor has concerns with the CCAA Plan, it could (and would) advise creditors of those concerns in its report on the CCAA Plan, following which the creditors would have the opportunity to vote on the Plan. The Monitor appears to have determined, however, that the CCAA Plan should not even be discussed with creditors notwithstanding that it is intended to preserve OTE LP's going concern with a view to maximizing creditor recoveries, including by settling ongoing, costly and uncertain litigation, in addition to providing collateral benefit to social stakeholders through increased commercial activity on reserves.

50. Apart from whether the role of the Monitor is to act as gatekeeper and to withhold potential compromises from creditors and disenfranchise them, however, the effect of the CCAA Plan is not to deliver releases for no consideration. Rather, as indicated above, the CCAA Plan seeks a comprehensive settlement of creditor claims on terms that I believe are advantageous to creditors. If the Monitor believes otherwise, then I would have thought that it would engage with OTE USA and the Plan Sponsor to share its value assessment and to attempt to negotiate improved terms. Of course, inasmuch as the Monitor has no vote in respect of a plan of arrangement, I would expect that the Plan Sponsor would want key creditors to be part of that discussion.

F. Next Steps

51. At this time, OTE USA and the Plan Sponsor would like to contemporaneously advance their due diligence and present the CCAA Plan Term Sheet to creditors, if they will meet with us, in order to determine their interest in the proposal, identify any points of concern, and improve the CCAA Plan where possible. To demonstrate its seriousness, the Plan Sponsor is prepared to provide a \$1,000,000 deposit in advance of meeting with creditors. The Monitor can attend those meetings, and it can make whatever recommendations it thinks are appropriate for consideration by creditors, and, in due course, the Court.

52. It appears to me that the OTE LP Group only has only six material creditors (excluding Royal Bank of Canada (“**RBC**”), on the basis that it is a secured creditor, and that the OTE Group has sufficient cash on hand to repay the debt to owing to RBC, in full, and it should do so at the earliest opportunity). I have attempted to summarize the proofs of claim filed in the list marked as **Exhibit CC** to this affidavit. Based on that list, it appears to me that the material unsecured creditors (other than OTE USA and the Gen 7 entities who are all supportive of the CCAA Plan) are as follows:

(a) MOF (approximate claim as filed: \$136 million);

(b)

[REDACTED]

(c)

[REDACTED]

- (d) [REDACTED]
- (e) [REDACTED]
- (f) Canada Revenue Agency (which filed a placeholder claim of \$1)

53. Of the foregoing claimants, the MOF is by far the most significant. Subject to a disallowance of its claim, the MOF appears to hold a veto over any restructuring plan, and an ability to carry the value-component of a vote. Its views in respect of the proposed CCAA Plan are obviously relevant, and it would be useful for OTE USA and the Plan Sponsor to have the benefit of those views.

54. In addition to the foregoing, RBC has a secured claim which I understand to be approximately \$4.5 million plus any costs and interest accrued over the course of these proceedings. OTE USA takes no issue with that claim and believes that it should be paid, in full, out of available cash so as to stop the accrual of interest and professional fees, and so as to simplify these proceedings through the reduction in the number of interested stakeholders.

G. *Appointment of a Mediator*

55. In light of the challenges that it has faced in obtaining disclosure of information from the Monitor, the Monitor's adversity to the CCAA Plan, and the related allegations advanced by the Monitor, OTE USA is also proposing that a mediator be appointed to mediate any future information requests, and to facilitate negotiations in respect of a

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comprehensive solution to the issues related to the CCAA Plan, whether through the CCAA Plan that it has presented or otherwise.

56. As the creditor having one of the largest (and perhaps the largest) liquidated unsecured claims in these proceedings, OTE USA is very concerned that the strategy being pursued by the Monitor will significantly erode recoveries through professional fees, and that the interest of creditors is best served through a timely omnibus settlement, if one can be achieved.

AFFIRMED remotely by Brian Page at the City of Winnipeg in the Province of Manitoba before me at the City of Toronto, in the Province of Ontario, on this 29th day of November, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely



Commissioner for Taking Affidavits

RYAN SHAH (LSO #: 88250C)



BRIAN PAGE

This is Exhibit "A"
in the Affidavit of Brian Page
sworn the 29th day of November,
2023



Commissioner for Taking Affidavits, etc.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**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.**

PROOF OF CLAIM

**FOR CLAIMS AGAINST ORIGINAL TRADERS ENERGY LTD., 2496750 ONTARIO INC.,
OTE LOGISTICS LP AND ORIGINAL TRADERS ENERGY LP**

(collectively, the "OTE Group")

1. PARTICULARS OF CLAIMANT

- | | |
|---------------------------------------|---|
| (a) Full Legal Name of Claimant: | OTE USA LLC (the "Claimant") |
| (b) Full Mailing Address of Claimant: | <hr/> 1505 E Grand River Ave Suite 200
<hr/> East Lansing Michigan, 48823
<hr/> <hr/> |
| (c) Telephone Number of Claimant: | 517-512-0071 |
| (d) Facsimile Number of Claimant: | <hr/> |
| (e) E-mail Address of Claimant: | payables@otefuel.com
With a copy to:
max.starnino@paliareroland.com ; and
joseph.berger@paliareroland.com <hr/> |
| (f) Attention (Contact Person): | Derek Lynch, Max Starnino, Joseph Berger |

2. **PARTICULARS OF ORIGINAL CLAIMANT FROM WHOM YOU ACQUIRED CLAIM, IF APPLICABLE:**

(a) Have you acquired this Claim by assignment? Yes No

(if yes, attach documents evidencing assignment)

(b) Full Legal Name of original Claimant(s): N/A

3. **PROOF OF CLAIM**

THE UNDERSIGNED CERTIFIES AS FOLLOWS:

- (a) I hold the position of Director of Import and Export of the Claimant;
- (b) I have knowledge of all the circumstances connected with the Claim described and set out below;
- (c) The OTE Group was and still is indebted to the Claimant as follows:¹

Applicable OTE Group Debtor(s)	Pre-Filing Claim Amount	Restructuring Period Claim Amount	Secured, Priority Unsecured, or Unsecured	Value of Security, if any
Original Traders Energy LP (the "Debtor") and Original Traders Energy Ltd as General Partners of the Debtor	\$7,335,743.23 plus interest and costs		Secured	\$7,335,743.23 plus interest and costs

¹ Any Claims denominated in a foreign currency shall be converted to Canadian Dollars based on the Bank of Canada's daily average exchange rate for that currency against the Canadian Dollar on the Filing Date

4. **PARTICULARS OF CLAIM:**

The particulars of the undersigned's Claims (including Pre-Filing Claims and Restructuring Period Claims) are attached.

(Provide full particulars of the Claim and supporting documentation, including amount, description of transaction(s) or agreement(s) giving rise to the Claim, name of any guarantor(s) which has guaranteed the Claim, particulars and copies of any security and amount of Claim allocated thereto, date and number of all invoices, particulars of all credits, discounts, etc. claimed.)

The particulars of the Claim are set forth and appended in the Complaint filed by the Claimant against Original Traders Energy LP, dated January 18, 2023 (the "Michigan Action") at **Schedule A**.

The amount currently owing is as follows:

Description	Amount owing (USD)
Unpaid Invoices in respect of Delivered Fuel	\$4,909,457.42
Interest on Unpaid Invoices (2%) to May 31, 2023	\$505,917.30
Interest on Unpaid Invoices Post May 31, 2023	TBD
Legal Fees to January 30, 2023	\$77,095.50
Total	\$5,492,470.22

A list of the unpaid invoices, including interest in respect of unpaid invoices up to May 31, 2023 is included at Schedule B to this proof of claim.

The total amount owing converted to Canadian Dollars using the Court Approved Exchange rate of 1.3356 = **\$7,335,743.23**, plus such further interest as may apply.

In email correspondence dated September 8, 2022, Scott Hill, acting on behalf of the OTE Group, including the Debtor, expressly or impliedly pledged the accounts receivable owing by "Gen 7" as security for the Claim. A copy of the referenced email is marked as **Schedule C** to this proof of claim.

The Claimant reserves the right to set off the Claim described herein against any liability it may have or be found to have to the Debtor or other members of the OTE Group, including without limitation any liability arising from the Statement of Claim in court file number CV-22-00688572 (which liability is not admitted but expressly denied).

The Claimant reserves the right to supplement and/or amend its claim herein upon further discovery.

This Claim is in addition and without prejudice to any claims that OTE USA LLC may have against third parties to these proceedings.

5. **FILING OF CLAIM**

For Pre-Filing Claims, this Proof of Claim must be returned to and received by the Monitor by **5:00 p.m. (Eastern Time) on the Claims Bar Date (June 27, 2023)**.

For Restructuring Period Claims, this Proof of Claim must be returned to and received by the Monitor by **5:00 p.m. (Eastern Time) on the later of the Claims Bar Date and the date that is thirty (30) days after the Monitor sends a Claims Package with respect to a Restructuring Period Claim**.

In both cases, completed forms must be delivered by prepaid registered mail, courier, personal delivery, facsimile transmission or email at the address below to the Monitor at the following address:


KPMG Inc., Court-appointed Monitor of the OTE Group
Claims Process

333 Bay Street, Suite 4600
Bay Adelaide Centre
Toronto, ON M5H 2S5

Attention: Chris Gard / Broderick Lomax
Telephone: 1-833-665-0666 (toll free within North America)
416-468-7000 (local)
Fax: 416-777-8818
Email: OTEGroup@kpmg.ca

DATED at East Lansing this 27 day of June, 2023.
Michigan

OTE USA LLC


Name: Derek Lynch
Title: Director of Import and Export

I have authority to bind the corporation.

Capitalized terms that are not defined herein have the meanings ascribed thereto in the Claims Procedure Order.

Schedule A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

OTE USA LLC,
a Michigan limited liability company,

Plaintiff,

Case No.:

Hon.

v.

COMPLAINT

ORIGINAL TRADERS ENERGY LP,
a Canadian limited partnership,

Defendant.

Plaintiff OTE USA LLC (“OTE USA”), for its Complaint against Defendant Original Traders Energy LP (“Original Traders”), states as follows:

Parties, Jurisdiction, and Venue

1. OTE USA is a Michigan limited liability company, with its principal place of business in East Lansing, Michigan. OTE USA’s sole member is a Michigan corporation with its principal place of business in Michigan.

2. Original Traders is a Canadian limited partnership with its principal place of business in Ontario, Canada. Upon information and belief, Original Traders’ general partner is a Canadian corporation with its principal place of business in Canada. Upon information and belief, no partner within Original Traders is located in Michigan.

3. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a)(2) as the amount in controversy exceeds \$75,000, exclusive of interest and costs, and the parties are not citizens of the same state.

4. OTE USA and Original Traders contractually consented to personal jurisdiction in this Court: “If either party brings against the other party any proceeding arising out of this Agreement, that party will bring that proceeding only in the United States District Court for the District of Michigan or in any state court of Michigan.” (Agreement, Product Sales Terms at § 13.)

5. Venue is proper in this Court under 28 U.S.C. § 1391(2) and (3) given delivery of the fuel at issue took place at designated terminals in Shelby County and Wayne County, Michigan and because Original Traders consented to jurisdiction in this district pursuant to the Agreement at issue.

The Parties’ Agreement

6. On or about June 1, 2022, Original Traders as buyer, and OTE USA as seller, entered into a Supply Agreement under which OTE USA agreed to supply certain fuel to Original Traders at agreed-upon prices.

7. The Supply Agreement expressly incorporates by reference Product Sales Terms, which are attached to the Supply Agreement. The Agreement includes a Michigan choice of law provision and expressly excludes application of the United Nations Convention on Contracts for the International Sale of Goods. The Supply

Agreement and Product Sales Terms are collectively referred to herein as the “Agreement.”¹

8. Pursuant to the Agreement, each month, Original Traders was to submit a “written nomination” to OTE USA for its purchase of fuel, specifying the monthly quantity of fuel (in gallons) it intends to purchase at specified terminal locations (the “Nomination”). OTE USA then had three business days after receipt to accept or reject each monthly nomination.

9. In the event Original Traders failed to timely submit a Nomination for a delivery month, or if OTE USA rejected a Nomination and the parties were unable to agree to an adjustment of the Nomination within two business days of OTE USA’s rejection, the Agreement provides that the applicable accepted Nomination for the immediately preceding delivery month will be deemed the accepted Nomination for the delivery month.

10. Under the Agreement, during each month, Original Traders was required to purchase at least 90% of the fuel contemplated by the accepted Nomination at the associated terminals, and OTE USA was not required to supply fuel for Original Traders’ purchases in amounts greater than 100% of the applicable accepted Nomination.

¹ In light of the confidential designation contained in the Agreement, OTE USA has refrained from attaching a copy to this Complaint.

11. Fuel was lifted, i.e. loaded, onto tankers at designated terminals and then transported by third-party transportation logistics companies by way of road or rail to Original Traders' designated locations in Canada. When fuel was transported by road, it generally arrived at Original Traders' designated locations within 24 hours of being lifted. Fuel that had been transported by rail generally arrived at Original Traders' designated locations five to seven days after being lifted.

12. Once fuel was lifted at the designated terminals, the third-party supplier of fuel would send an invoice to OTE USA for the lifted fuel, and in turn, OTE USA would send an invoice to Original Traders for that fuel. Invoices were typically sent from OTE USA to Original Traders approximately two to three days after the fuel was lifted.

13. The invoices OTE USA sent pursuant to the Agreement specified a payment term of "Net 05," meaning that payment was due within five days of the invoice date.

14. Under the Agreement, payment terms are subject to change by OTE USA at any time. On August 10, 2022, OTE USA advised Original Traders that OTE USA reserved the right to apply payments to Original Traders' open balance as it saw fit.

15. Pursuant to the Agreement, if OTE USA does not receive payment when due, it may impose a 2% late payment charge, and if a lawsuit is filed to collect, OTE USA is entitled to recover its attorney's fees and court costs.

16. Under the Agreement, OTE USA also reserves the right to reclaim fuel for which it was not paid, and to resell that fuel at Original Traders' expense.

Original Traders Defaults on its Payment Obligations

17. For months, the parties performed pursuant to the Agreement, whereby OTE USA supplied fuel to Original Traders in exchange for monetary payment from Original Traders to OTE USA.

18. However, beginning in August 2022, Original Traders defaulted on its payment obligations and ceased making payments for fuel it purchased pursuant to the Agreement.

19. Specifically, from August 4, 2022 through September 7, 2022, Original Traders failed to pay 111 invoices for fuel it purchased, resulting in an open balance of USD \$4,909,457.42 (the "Invoices"). After assessing the 2% late payment penalty under the Agreement, the total open balance due from Original Traders to OTE USA as of January 12, 2023, is USD \$5,320,458.56 (the "Outstanding Balance").

The Segregated Fuel

20. At the time of Original Traders' default, 41 rail-cars worth of fuel nominated by Original Traders were in the possession of a third-party carrier and in the process of being transported to Original Traders' designated location.

21. In accordance with the Agreement and Michigan law, OTE USA directed the carrier to stop delivery of that fuel, prior to final delivery (the "Undelivered Fuel").

22. OTE USA has since resold ten rail-carloads of the Undelivered Fuel to three (3) third-parties in exchange for payment (the "Recovered Amount"). The Recovered Amount totals \$1,217,606.25 (USD), which is approximately one-fifth of the Outstanding Balance.

23. As of the date of this filing, the remainder of the Undelivered Fuel that has not been resold (the "Segregated Fuel"), is being stored at a third-party private rail company in Sudbury, Ontario, Canada in exchange for a daily rental fee.

OTE USA's Repeated Demands Payment from Original Traders

24. Of the Invoices at issue, 29 pertain to fuel transported to Original Traders' designated locations via road, and upon information and belief, that fuel has already been resold by Original Traders (the "Delivered Fuel"). The portion of

the total Invoices pertaining to the Delivered Fuel is USD \$1,223,265.01 (the “Delivered Fuel Balance”).

25. The remaining 82 unpaid Invoices pertain to the Undelivered Fuel. The portion of the Invoices amount pertaining to the Undelivered Fuel less the Recovered Amount is \$2,468,586.16 USD (the “Segregated Fuel Balance”).

26. On September 8, 2022, OTE USA’s representative sent email correspondence to Original Traders’ representative advising that, based on “yesterday’s aging and assuming no payment today or tomorrow, a 2% late fee / Reactivation fee in the amount in the amount of \$60,010.36 will need to be paid in addition to your payments.” OTE USA’s representative further advised that on “Monday September 12th [Original Traders] will have to make a payment of \$4,755,278.43 which includes the outstanding amount of \$4,695,268.07 plus a late fee of \$60,010.36” and indicated that “[t]his penalty can be avoided by making payment today in the amount of \$1,270,757.76 and tomorrow in the amount of \$1,230,178.23.”

27. That same day, Original Traders representative responded “Gen 7 pays their \$8 000 000 plus outstanding gas bill, [Original Traders] pays OTE USA.” In other words, Original Traders advised that once it received payment from its customer, “Gen 7,” Original Traders would pay OTE USA.

28. On November 3, 2022, OTE USA's representative sent another email correspondence to Original Traders' representative, attaching a copy of its aging report as of November 3, 2022, and instructing Original Traders to "remit payment at [its] earliest convenience." Original Traders did not respond.

29. A week later, on November 10, 2022, OTE USA's representative sent yet another email correspondence to Original Traders' representative, attaching a copy of its aging report as of November 10, 2022 and advising Original Traders, again, to "remit payment at [its] earliest convenience." The aging report attached to the OTE USA's representative's November 10, 2022 email communication identifies, for each unpaid Invoice, its respective due date, days past due, amount, and open balance with 2% late payment penalty, along with the total Outstanding Balance. Original Traders, again, did not respond.

30. OTE USA has continued to send emails to Original Traders each and every business day demanding that Original Traders pay the Outstanding Balance. Original Traders had not responded.

31. Nothing in the Agreement or otherwise permits Original Traders to refuse to pay OTE USA the Outstanding Balance less the Recovered Amount for fuel it accepted pursuant to the Agreement based on non-payment or late payment of Original Traders' customers.

Count I – Breach of Contract as to the Delivered Fuel

32. OTE USA incorporates by reference all preceding paragraphs.

33. The Agreement between OTE USA and Original Traders is a valid and enforceable contract.

34. OTE USA has fulfilled its obligations under the Agreement.

35. Original Traders has breached the Agreement by failing to pay the Delivered Fuel Balance pursuant to the payment obligations set forth in the Agreement.

36. As a direct and proximate result of Original Traders breach of the Agreement, OTE USA has suffered and will continue to suffer damages, including, but not limited to, the Delivered Fuel Balance, together with the 2% late payment charge, interest, costs and attorney's fees incurred in enforcing OTE USA's rights under the Agreement.

Count II – Breach of Contract as to the Segregated Fuel

37. OTE USA incorporates by reference all preceding paragraphs.

38. The Agreement between OTE USA and Original Traders is a valid and enforceable contract.

39. OTE USA has fulfilled its obligations under the Agreement.

40. Original Traders breached the Agreement by failing to pay the Segregated Fuel Balance.

41. OTE USA exercised its right under Michigan law to stop the delivery of the Segregated Fuel by the third-party carrier in light of the Outstanding Balance. *See* MCL 440.2705.

42. Upon payment of the Segregated Fuel Balance plus an amount equal to the storage fees associated with the Undelivered Fuel, any other incidental and/or consequential damages, and OTE USA's attorney's fees and costs, OTE USA will direct the third-party carrier to release the Segregated Fuel to Original Traders.

43. As a direct and proximate result of Original Traders' breach of the Agreement, OTE USA has suffered and will continue to suffer damages, including, but not limited to, the Segregated Fuel Balance, together with the 2% late payment charge, the ensuing rental fees assessed by the third-party private rail company, interest, costs and attorney's fees incurred in enforcing OTE USA's rights under the Agreement.

Count III- Unjust Enrichment as to Delivered Fuel

44. OTE USA incorporates by reference all preceding paragraphs.

45. Original Traders received a financial benefit from OTE USA in the form of the Delivered Fuel in an amount equating to the Delivered Fuel Balance that OTE USA supplied and which Original Traders unequivocally accepted and did not return.

46. Although Original Traders accepted the Delivered Fuel supplied by OTE USA, it failed to pay OTE USA the Delivered Fuel Balance.

47. Original Traders' failure to pay the Delivered Fuel Balance to OTE USA has resulted in an inequity, as OTE USA has lost significant time, resources and money supplying fuel for which it was not compensated.

WHEREFORE, OTE USA respectfully requests judgment in its favor and the following relief:

- A. That OTE USA be awarded damages from Original Trader in the amount of the Outstanding Balance less the Recovered Amount, plus interest and any incidental and consequential damages, including, but not limited to, any ensuing charges assessed by the third-party carrier holding the Segregated Fuel;
- B. That OTE USA be awarded its costs and reasonable attorney's fees associated with this action pursuant to the Agreement;
- C. That OTE USA be awarded both pre-judgment and post-judgment interest in an amount to be determined; and
- D. That the Court award any other relief that it deems just and proper under the circumstances.

Respectfully submitted,

Dated: January 19, 2023

By: /s/Brian Wassom
WARNER NORCROSS + JUDD LLP
Brian Wassom (P60381)
45000 River Ridge Dr., Ste. 300
Clinton Twp., MI 48038
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Detroit, MI 48201
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Attorneys for Plaintiff

Schedule B

OTE USA LLC
 Invoices for Original Traders Energy

All Transactions					
Num	Date	Due Date	Aging	Amount (USD)	Open Balance (USD)
IMA 2253	2023-05-31	2023-05-31	13	72,273.90	72,273.90
IMA 2252	2023-04-30	2023-04-30	44	72,273.90	72,273.90
IMA 2251	2023-03-31	2023-03-31	74	72,273.90	72,273.90
IMA 2250	2023-02-28	2023-02-28	105	72,273.90	72,273.90
IMA 2249	2023-01-31	2023-01-31	133	72,273.90	72,273.90
IMA 2248	2022-12-31	2022-12-31	164	72,273.90	72,273.90
IMA 2247	2022-11-30	2022-11-30	195	72,273.90	72,273.90
1300	2022-09-07	2022-09-12	274	41,885.24	41,885.24
1301	2022-09-07	2022-09-12	274	41,098.94	41,098.94
1302	2022-09-07	2022-09-12	274	44,055.79	44,055.79
1277	2022-09-06	2022-09-11	275	44,061.96	44,061.96
1278	2022-09-06	2022-09-11	275	44,845.23	44,845.23
1279	2022-09-06	2022-09-11	275	44,362.99	44,362.99
1280	2022-09-06	2022-09-11	275	39,767.35	39,767.35
1281	2022-09-06	2022-09-11	275	44,848.08	44,848.08
1282	2022-09-06	2022-09-11	275	44,073.25	44,073.25
1283	2022-09-06	2022-09-11	275	41,092.95	41,092.95
1284	2022-09-06	2022-09-11	275	44,848.08	44,848.08
1285	2022-09-06	2022-09-11	275	44,078.90	44,078.90
1286	2022-09-06	2022-09-11	275	44,850.93	44,850.93
1287	2022-09-06	2022-09-11	275	44,845.23	44,845.23
1288	2022-09-06	2022-09-11	275	44,848.08	44,848.08
1289	2022-09-06	2022-09-11	275	33,129.31	33,129.31
1290	2022-09-06	2022-09-11	275	43,670.11	43,670.11
1291	2022-09-06	2022-09-11	275	44,853.79	44,853.79
1292	2022-09-06	2022-09-11	275	43,586.03	43,586.03
1293	2022-09-06	2022-09-11	275	44,856.65	44,856.65
1294	2022-09-06	2022-09-11	275	44,084.55	44,084.55
1295	2022-09-06	2022-09-11	275	44,879.50	44,879.50
1296	2022-09-06	2022-09-11	275	44,084.55	44,084.55
1297	2022-09-06	2022-09-11	275	44,093.02	44,093.02
1298	2022-09-06	2022-09-11	275	53,924.26	53,924.26
1299	2022-09-06	2022-09-11	275	44,076.08	44,076.08
1265	2022-09-05	2022-09-10	276	43,758.79	11,253.97
1266	2022-09-05	2022-09-10	276	41,107.07	41,107.07
1267	2022-09-05	2022-09-10	276	44,098.66	44,098.66
1268	2022-09-05	2022-09-10	276	43,611.44	43,611.44
1269	2022-09-05	2022-09-10	276	38,815.50	38,815.50
1270	2022-09-05	2022-09-10	276	44,109.96	44,109.96
1271	2022-09-05	2022-09-10	276	44,152.30	44,152.30
1273	2022-09-05	2022-09-10	276	44,067.83	44,067.83
1274	2022-09-05	2022-09-10	276	44,084.55	44,084.55
1275	2022-09-05	2022-09-10	276	44,084.03	44,084.03
1276	2022-09-05	2022-09-10	276	43,909.19	43,909.19

OTE USA LLC
 Invoices for Original Traders Energy

All Transactions					
Num	Date	Due Date	Aging	Amount (USD)	Open Balance (USD)
1220	2022-08-31	2022-09-05	281	44,550.24	44,550.24
1222	2022-08-31	2022-09-05	281	44,567.10	44,567.10
1223	2022-08-31	2022-09-05	281	44,589.55	44,589.55
1225	2022-08-31	2022-09-05	281	44,567.10	44,567.10
1230	2022-08-31	2022-09-05	281	44,575.51	44,575.51
1234	2022-08-31	2022-09-05	281	44,581.14	44,581.14
1236	2022-08-31	2022-09-05	281	44,597.98	44,597.98
1238	2022-08-31	2022-09-05	281	44,569.90	44,569.90
1239	2022-08-31	2022-09-05	281	44,572.71	44,572.71
1240	2022-08-31	2022-09-05	281	44,609.21	44,609.21
1195	2022-08-30	2022-09-04	282	46,140.83	46,140.83
1197	2022-08-30	2022-09-04	282	46,143.75	46,143.75
1199	2022-08-30	2022-09-04	282	46,150.15	46,150.15
1202	2022-08-30	2022-09-04	282	46,167.73	46,167.73
1205	2022-08-30	2022-09-04	282	46,164.25	46,164.25
1207	2022-08-30	2022-09-04	282	46,178.89	46,178.89
1209	2022-08-30	2022-09-04	282	46,170.11	46,170.11
1210	2022-08-30	2022-09-04	282	46,181.28	46,181.28
1213	2022-08-30	2022-09-04	282	46,184.76	46,184.76
1215	2022-08-30	2022-09-04	282	46,193.53	46,193.53
1171	2022-08-25	2022-08-30	287	42,229.08	42,229.08
1173	2022-08-25	2022-08-30	287	42,239.62	42,239.62
1176	2022-08-25	2022-08-30	287	42,242.25	42,242.25
1178	2022-08-25	2022-08-30	287	42,244.88	42,244.88
1181	2022-08-25	2022-08-30	287	42,250.69	42,250.69
1183	2022-08-25	2022-08-30	287	42,255.96	42,255.96
1145	2022-08-24	2022-08-29	288	43,607.99	43,607.99
1146	2022-08-24	2022-08-29	288	43,615.66	43,615.66
1148	2022-08-24	2022-08-29	288	43,613.47	43,613.47
1150	2022-08-24	2022-08-29	288	43,621.68	43,621.68
1152	2022-08-24	2022-08-29	288	43,635.91	43,635.91
1156	2022-08-24	2022-08-29	288	43,640.85	43,640.85
1157	2022-08-24	2022-08-29	288	43,655.08	43,655.08
1158	2022-08-24	2022-08-29	288	43,646.32	43,646.32
1161	2022-08-24	2022-08-29	288	43,651.80	43,651.80
1162	2022-08-24	2022-08-29	288	43,651.80	43,651.80
1163	2022-08-24	2022-08-29	288	43,662.75	43,662.75
1165	2022-08-24	2022-08-29	288	43,670.97	43,670.97
1129	2022-08-23	2022-08-28	289	44,319.21	44,319.21
1130	2022-08-23	2022-08-28	289	44,311.39	44,311.39
1131	2022-08-23	2022-08-28	289	44,327.58	44,327.58
1132	2022-08-23	2022-08-28	289	44,327.58	44,327.58
1135	2022-08-23	2022-08-28	289	44,324.80	44,324.80
1136	2022-08-23	2022-08-28	289	44,324.80	44,324.80
1137	2022-08-23	2022-08-28	289	44,322.00	44,322.00

OTE USA LLC
 Invoices for Original Traders Energy

All Transactions

Num	Date	Due Date	Aging	Amount (USD)	Open Balance (USD)
1139	2022-08-23	2022-08-28	289	44,327.58	44,327.58
1109	2022-08-22	2022-08-27	290	46,569.02	46,569.02
1110	2022-08-22	2022-08-27	290	46,577.91	46,577.91
1111	2022-08-22	2022-08-27	290	46,592.71	46,592.71
1115	2022-08-22	2022-08-27	290	46,609.91	46,609.91
1120	2022-08-22	2022-08-27	290	46,628.23	46,628.23
1122	2022-08-22	2022-08-27	290	46,625.27	46,625.27
1124	2022-08-22	2022-08-27	290	46,640.07	46,640.07
1126	2022-08-22	2022-08-27	290	46,637.11	46,637.11
1127	2022-08-22	2022-08-27	290	46,634.15	46,634.15
1128	2022-08-22	2022-08-27	290	46,660.79	46,660.79
1085	2022-08-19	2022-08-24	293	46,665.82	46,665.82
1086	2022-08-19	2022-08-24	293	46,671.77	46,671.77
1094	2022-08-19	2022-08-24	293	46,718.72	46,718.72
1095	2022-08-19	2022-08-24	293	46,707.39	46,707.39
1096	2022-08-19	2022-08-24	293	46,703.88	46,703.88
1097	2022-08-19	2022-08-24	293	46,703.88	46,703.88
1098	2022-08-19	2022-08-24	293	46,715.76	46,715.76
1099	2022-08-19	2022-08-24	293	46,746.52	46,746.52
1057	2022-08-18	2022-08-23	294	45,457.15	45,457.15
1059	2022-08-18	2022-08-23	294	45,465.78	45,465.78
1061	2022-08-18	2022-08-23	294	45,465.24	45,465.24
1062	2022-08-18	2022-08-23	294	45,465.24	45,465.24
993	2022-08-04	2022-08-09	308	44,414.32	44,414.32
994	2022-08-04	2022-08-09	308	44,417.12	44,417.12
995	2022-08-04	2022-08-09	308	44,417.12	44,417.12
997	2022-08-04	2022-08-09	308	44,422.72	44,422.72
998	2022-08-04	2022-08-09	308	44,419.92	44,419.92
1001	2022-08-04	2022-08-09	308	44,431.13	44,431.13
Total					5,415,374.72

Schedule C

From: Scott Hill <scott.hill@originaltradersenergy.com>
Sent: Thursday, September 8, 2022 6:08 PM
To: Brian Page
Cc: Brian Page; Sandra Smoke; Austin Hill; Gary Loft; Derek Lynch; Miles Hill
Subject: Re: OTE AR report
Attachments: image001.png

Simply put folks, Gen 7 pays their \$8 000 000 plus outstanding gas bill, OTE pays OTE USA.

Thanks,
Scott Hill - President
Original Traders Energy
"A Six Nations Grand River Company"

On Sep 8, 2022, at 4:52 PM, Miles Hill <miles77x@gmail.com> wrote:

Brian

BAD afternoon to fuck with me
thats what you should say as in good afternoon

Tell GEN 7 to pay there FUCKEN BILLS OVER 8 MILLION LATE, LATE Payment fee 160,010.36
plus 60,010.36 USD TO OTE USA FOR BRIAN AND GLENN'S fuck ups look in the mirror that who you
Blame

Not the Blame Game again by you 2

ask your brother to pay OTE

24k a month for a boat for a 12 month period (ESSEX THEN PAY IT OFF) and pay for the boat an taxes to
bout on top of that with OTE monies AGAIN YOU SIGNED THIS DEAL with out Scott and I KNOWING

OTE interest rate isnt 2 % IT'S gonna be a lot higher than that

Lot more to come as I told you Im gonna dig to find every penny

I call A spade A spade no sugar coating or scamming things BY ME

Miles

On Thu, Sep 8, 2022 at 3:59 PM Brian Page <brian.page@otelogistics.ca> wrote:

Afternoon Miles,

Looks like your brother decided to take a couple of days off and not pay bills. Hopefully he enjoys himself as it just cost the company \$60K US.

Brian Page

From: Derek Lynch <derek.lynch@otefuel.com>
Sent: September 8, 2022 11:50 AM
To: Sandra Smoke <sandra.smoke@originaltradersenergy.com>; Scott Hill <scott.hill@originaltradersenergy.com>
Cc: Austin Hill <austin.hill@originaltradersenergy.com>; 'Gary Loft' <Gary.Loft@originaltradersenergy.com>
Subject: OTE AR report

Good Morning OTE,

Based on yesterday's aging and assuming no payments today or tomorrow, a 2% late fee/ Reactivation fee in the amount of \$60,010.36 will need to be paid in addition to your payments. Please be advised them that on Monday September 12th you will have to make a payment of \$4,755,278.43 which includes the outstanding amount of \$4,695,268.07 plus a late fee of \$60,010.36. This penalty can be avoided by making payment today in the amount of \$1,270,757.76 and tomorrow in the amount of \$1,230,178.23

Cheers!

Derek Lynch

Import/Export Co-Ordinator

C: 517-512-0071

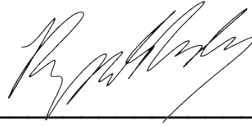
OTE USA

1504 E Grand River Ave, Suite 200
East Lansing, MI 48823

otefuel.com



This is Exhibit "B"
in the Affidavit of Brian Page
sworn the 29th day of November,
2023



Commissioner for Taking Affidavits, etc.

COURT FILE NO. CV-23-00693758-00CL

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
ORIGINALTRADERS ENERGY LTD. and 2496750 ONTARIO INC.

Applicants

CCAA PLAN TERM SHEET

Capitalized terms not otherwise defined below shall have the meaning ascribed to them in Schedule "A" hereto.

1.	Object	<p>This term sheet sets forth the basis upon which the OTE USA LLC ("OTE USA"), a creditor of Original Traders Energy Ltd. ("OTE GP") and Original Traders Energy Limited Partnership ("OTE LP", and together with OTE GP, "OTE LP Group"), and National Spirit Petroleum Ltd. in its capacity as general partner of National Spirit Petroleum LP, as plan sponsor (the "Plan Sponsor") propose that all Claims in respect of the OTE LP Group be resolved (the "Restructuring Proposal").</p> <p>For the avoidance of doubt, the Restructuring Proposal does not include 2496750 Ontario Inc. or OTE Logistics Limited Partnership (together "OTE Logistics") or the claims of OTE Logistics' creditors.</p> <p>In advance of the filing of the CCAA Plan, this Term Sheet shall form the basis of a support agreement between the Plan Sponsor and OTE USA as the creditor promoter of the CCAA Plan, and such other creditors of the OTE LP Group as the Plan Sponsor may require.</p> <p>The principal elements of the Restructuring Proposal (described in more detail below) to be comprised in the CCAA Plan shall include:</p> <p>(a) "Initial Plan Consideration": including: (i) the Deposit in the amount of \$1,000,000 to be paid by the Plan Sponsor; (ii) a \$2,000,000 initial</p>
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		<p>cash payment (the “Initial Cash Payment”) to be paid by the Plan Sponsor; (iii) release(s) of claims by 2658658 Ontario Inc. (“2658658”) and any other necessary related persons or entities to the Boat Sale Proceeds and the Plane Sale Proceeds in favour of OTE LP Group; and, (iv) all cash, cash equivalents on hand at OTE LP Group as of the Plan Implementation Date, net of the amount required to pay Priority Claims on the Plan Implementation Date (the “Initial Creditor Cash Pool”);</p> <p>(b) “Subsequent Plan Recoveries”: On the Implementation Date, (i) the Plan Sponsor shall issue a promissory note in favour of the Note Administrator (the “Plan Note”) in the principal amount of \$10,000,000 (the “Principal Note Amount”) which shall provide for annual payments (“Annual Note Payments”) by the Plan Sponsor to the Note Administrator equal to the greater of (1) 30% of the Plan Sponsor’s Free Cash (as defined in Schedule “A”), and (2) \$1,000,000, and (ii) OTE LP Group shall have the option of appointing OTE USA as its agent (in such capacity, the “Agent”) for purposes of pursuing and recovering rebates in favour of OTE LP Group from the Internal Revenue Service and the State of Michigan in respect purchases of fuel occurring prior to the Plan Implementation Date (the “Foreign Tax Rebates”) at a cost equal to 10% of the amount recovered by the Agent in respect of the Foreign Tax Rebates (the “Agent’s Fee”). The Agent shall promptly remit (or direct) all Foreign Tax Rebates collected net of the Agent’s Fee (or with an invoice for the applicable Agent’s Fee) to the Monitor for payments to OTE LP Group Creditors in accordance with the CCAA Plan (“Recovered Tax Rebates”).</p> <p>Plan Transactions:</p> <p>On Plan Implementation, in consideration for the Initial Plan Consideration and the Plan Note, the Plan Sponsor shall acquire all of the property, assets and undertaking of the OTE LP Group on an “as is, where is basis”, free</p>
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		<p>and clear of all claims and encumbrances, and take an assignment of and assume all contracts, leases and (to the extent assignable) permits and licenses of OTE LP Group, pursuant to (i) an Approval and Vesting Order and (ii) an Assignment Order pursuant to section 11.3 of the CCAA (the “Assignment Order”), each in form and substance satisfactory to the Plan Sponsor and made concurrently with the Plan Sanction Order.</p> <p>The Plan Sanction Order shall include the Plan Releases, and shall direct the dismissal of the Pending Litigation, all with effect on Plan Implementation.</p>
2.	Definitive Documents	<p>The Definitive Documents in respect of the Restructuring Proposal shall include the following documents:</p> <ul style="list-style-type: none"> (a) the CCAA Plan; (b) the CCAA Sanction Order; (c) the Approval and Vesting Order; (d) the Assignment Order; (e) the Contractual Releases; (f) the Plan Note and Security Agreement; (g) the Agent Appointment (if invoked); (h) such other documents as may be required to implement the CCAA Plan and the Restructuring Proposal generally.
3.	Aggregate Plan Consideration and Waiver of Claims	<p>The aggregate consideration available to Accepted Creditors pursuant to the CCAA Plan, to be funded through the payment of the Initial Cash Consideration, the release of competing interests to the Boat Sale Proceeds and the Plane Sale Proceeds, the payment of the Annual Note Payments, and recovery and remittance of the Foreign Tax Rebates is estimated to be approximately \$43,500,000 plus avoided administration/litigation costs (the “Aggregate Plan Consideration”).</p>

		<p>In order to improve recoveries to other OTE LP Group creditors, on and conditional upon Plan Implementation, any Released Parties who have filed a claim in the CCAA Proceedings shall waive and release their entitlements to the receipt of dividends from the Aggregate Plan Consideration.</p>
4.	<p>Initial Plan Consideration (Deposit, Initial Cash Payment, Proceeds Releases)</p>	<p>Deposit: Plan Sponsor shall pay a Deposit of \$1,000,000 (the “Deposit”), to be held by the Monitor’s counsel in an interest bearing trust account, prior to the Plan Sponsor meeting with the first of: Ontario Ministry of Finance, Canada Revenue Agency, Zurich Insurance, Export Development Canada, Wells Fargo, and AITX (which meeting(s) the Monitor is invited to attend) to solicit such creditors’ support for the Restructuring Proposal and CCAA Plan. The Deposit and any accrued interest thereon shall be returned to the Plan Sponsor, without set off, in the event that (i) the Plan Sponsor in good faith and in its sole discretion determines there is insufficient creditor support for the CCAA Plan and the Restructuring Proposal to proceed further and delivers a notice to the Monitor to that effect; (ii) the CCAA Plan is not approved by the requisite CCAA double majority of OTE LP Group creditors; (iii) the CCAA Court does not make any of the Plan Sanction Order, the Approval and Vesting Order or the Assignment Order on terms acceptable to the Plan Sponsor in its sole discretion; (iv) the CCAA Plan is not implemented before the Outside Date for reasons other than a failure of the Plan Sponsor to satisfy its obligations under the CCAA Plan or any Order or corollary agreements for Plan Implementation. On and conditional upon Plan Implementation the Deposit and accrued interest thereon shall be released into the Initial Creditor Cash Pool.</p> <p>Initial Cash Payment: On and conditional upon Plan Implementation, the Plan Sponsor shall pay the Initial Cash Payment of \$2,000,000 to the Monitor for deposit into the Initial Creditor Cash Pool.</p> <p>Boat Sale Proceeds: On and conditional upon Plan Implementation, 2658658 and any other necessary related persons or entities shall provide the Monitor and OTE LP Group a full and final release of its claims</p>

		<p>to the proceeds of the sale of the boat “Cuz We Can” (estimated to be approximately \$3,000,000)(the “Boat Sale Proceeds”) for deposit into the Initial Creditor Cash Pool;</p> <p>Plane Sale Proceeds: On and conditional upon Plan Implementation, 2658658 and any other necessary related persons or entities shall provide the Monitor and OTE LP Group of a full and final release of its claims to the proceeds of the sale of the following interests in aircraft: (i) a 6.25% undivided fractional aircraft interest in s/n 525B0668, C-FSFO; (ii) a 25.0% undivided fractional aircraft interest in s/n 525B0642, C-GNAS; and, (iii) a 12.5% undivided fractional aircraft interest in Embraer Legacy 450 s/n 55010039, C-GASK (estimated to be approximately \$5,000,000) (the “Plane Sale Proceeds”) for deposit into the Initial Creditor Cash Pool;</p> <p>Additional Amounts: The Initial Creditor Cash Pool shall include the cash and cash equivalents on hand with the Monitor or OTE LP Group as of the Plan Implementation Date.</p>
5.	Foreign Tax Rebate Agent Appointment	<p>On and conditional upon Plan Implementation, OTE LP Group shall have the option of appointing OTE USA as OTE LP Group’s Agent to pursue the recovery and collection of the Foreign Tax Rebates for and on behalf of OTE LP Group, pursuant to an Agency Appointment Agreement acceptable to OTE USA (the “Agent Appointment”) providing for a fee payable to OTE USA equal to 10% of the Foreign Tax Rebates recovered by it. The Agent shall use reasonable commercial efforts to collect all Foreign Tax Rebates available to OTE LP Group and arrange payment to the Monitor or as directed by the Monitor for distribution to OTE LP Group Creditors.</p>
6.	Promissory Note in respect of Future Payments and Security	<p>On and conditional upon Plan Implementation, the Plan Sponsor shall execute and deliver to the Monitor the Plan Note, in the amount of \$10,000,000, payable to the Monitor, in trust for Accepted Creditors.</p> <p>The Plan Note shall be interest free and provide for Annual Note Payments by the Plan Sponsor representing the greater of (a) 30% of the Plan Sponsor’s “Free Cash” as defined below for the</p>

		<p>applicable year, and (b) \$1,000,000.</p> <p>The Annual Note Payments shall be due 30 days after the Plan Sponsor’s tax filing due date. The first payment calculation and payment schedule shall commence following the Plan Sponsor’s fiscal year end December 31, 2024, in accordance with section 16 below.</p> <p>“Free Cash” shall be the amount calculated, pursuant to Accounting Standards for Private Enterprises (“ASPE”), applied consistently on a go-forward basis, as follows: (i) Net Income, after taxes; (ii) plus other non-cash charges or credits (including, but not limited to, depreciation and changes in non-cash working capital balances related to operations as shown on the cash flow statement prepared in accordance with ASPE); (iii) plus changes in current assets and liabilities excluding cash (together, “working capital”); (iv) plus any post-employment benefit expenses recognized in the ordinary course, less post-employment benefit expense payments made in the ordinary course, (v) less capital expenditures and investments in long term assets to a maximum, annually, of \$2,000,000; (vi) less debt repayments, repurchases, or redemptions</p> <p>The amounts due under the Plan Note shall be secured by a general security interest in all of the property, assets and undertakings of the Plan Sponsor.</p>
7.	Creditor Entitlements and Distributions	<p>The Aggregate Plan Consideration shall be distributed by the Monitor to Accepted Creditors of the OTE LP Group on the following basis:</p> <ul style="list-style-type: none"> (a) Each Accepted Creditor shall receive an initial distribution from the Monitor equal to the lesser of the amount of their Accepted Claim and \$25,000, (b) the balance of the Aggregate Plan Consideration shall be distributed by the Monitor to Accepted Creditors, from time to time, on a <i>pari passu</i> basis based on their then outstanding Accepted Claim, after application of the payment in (a). <p>Distributions to Accepted Creditors shall be made by the Monitor, from time to time, as circumstances permit, in accordance with the terms of the CCAA Plan and the</p>

		CCAA.
8.	Comprehensive Release	<p>Subject to the statutory limitations in s. 5.1(2) and 19(2) of the CCAA, the CCAA Plan and Plan Sanction Order shall, on implementation of the CCAA Plan and on terms that are in form and substance satisfactory to the Plan Sponsor, fully, finally, irrevocably, absolutely and forever release, remise and discharge the Released Parties from any and all claims in respect of their dealings with the OTE LP Group (the “Release”). In addition, the Major Creditors shall execute contractual releases in favour of the Released Parties in form and substance satisfactory to the Plan Sponsor (the “Contractual Releases”).</p> <p>Subject to the approval of the Plan Sponsor, the Major Creditors and the Court, the Release may be extended to third parties upon their making a reasonable contribution to the CCAA Plan.</p>
9.	Termination of Pending Litigation	<p>The Plan Sanction Order shall provide that on and conditional upon Plan Implementation, the following proceedings shall be dismissed with prejudice and without costs (“Pending Litigation”):</p> <ul style="list-style-type: none"> (a) Original Traders Energy LP et al. v. 2658658 Ontario Inc. et al. – CV-22-00688572-0000 (Ontario) (b) McDougall Energy Inc. v. Original Traders Energy LP et al. – CV-22-000290090000 (Ontario) (c) Claybar Contracting Inc. v. Original Traders Energy Ltd. et al. – CV-22-000800490000 (Ontario) (d) OTE USA LLC v. Original Traders Energy LP – Case No. 2:23-CV-10152 (Michigan) (e) Jerry Laughlin v. Original Traders Energy Ltd. – SC-22-000355330000 (Small Claims – Hamilton); and, (f) Such other actions as may be designated in the CCAA Plan relating to the subject matter of the

		<p>Restructuring Proposal.</p> <p>Furthermore, the Plan Sanction Order shall provide that:</p> <p>(a) Effective from the filing of the Plan Implementation Certificate with the CCAA Court, all parties to the Pending Litigation, including each plaintiff and defendant therein, shall be deemed to have given all consents necessary to effect the termination with prejudice and without costs of the Pending Litigation,</p> <p>(b) It shall have full force and effect in all Provinces and Territories, the United States and elsewhere, and as against all Persons against whom it may apply; and</p> <p>(c) Request that each applicable court in which the Pending Litigation was commenced:</p> <p>(i) aid, recognize and assist the CCAA Court to confirm that, effective as and from the date of the filing of the Plan Implementation Certificate with the CCAA Court, the CCAA Plan has fully and finally resolved and definitively settled the Pending Litigation;</p> <p>(ii) provide such assistance to the OTE LP Group and its Monitor as may be necessary or desirable to give effect to the Sanction Order or to assist the OTE LP Group and its Monitor in carrying out the terms of the Sanction Order and CCAA Plan; and</p> <p>(iii) issue such orders as may be necessary to terminate all of the Pending Litigation, with prejudice and without costs.</p>
10	Annual Reporting	<p>Each fiscal year while the Principal Note Amount remains outstanding, the Plan Sponsor shall provide the Monitor with the following financial information:</p> <p>(a) an audited financial statement for the most</p>

		<p>recently ended fiscal year (“Annual Financial Statement”);</p> <p>(b) where applicable, a report identifying and discussing the differences between the Plan Sponsor’s financial performance forecast in its business plan for the most recently ended fiscal year, and its actual financial performance in that year;</p> <p>(c) all other relevant assumptions, details and schedules that support the Annual Financial Statement;</p> <p>(d) its business plan for the following fiscal year (the “Business Plan”);</p> <p>(e) its calculation of Free Cash generated in the most recently ended fiscal year and the Annual Note Payments; and,</p> <p>(f) a certification from the Plan Sponsor’s chief financial officer that the quantum of the Annual Note Payments to be made by the Plan Sponsor in respect of the prior fiscal year has, within their knowledge, been calculated accurately in accordance with the Free Cash Definition and all other requirements.</p>
11.	Information Requests	<p>While the Principal Note Amount remains outstanding, the Plan Sponsor shall provide to the Monitor such information as the Monitor may reasonably require to verify the calculation of the Annual Note Payments to be made by the Plan Sponsor in respect of each calendar year, and to consider any circumstances in respect of the Plan Sponsor which caused or could reasonably be expected to cause a Material Adverse Effect, or an Event of Default (“Information Requests”).</p>
12.	Access to the Plan Sponsor’s Management	<p>While the Principal Note Amount remains outstanding and in addition to the provision of information otherwise contemplated herein, the Plan Sponsor shall provide the Monitor with reasonable access to its key management personnel to answer any reasonable questions that the Monitor may have arising from or in connection with the financial records and information produced to the</p>

		Monitor pursuant to the Plan Note.
13	Access to Information by Major Creditors	<p>Information provided to the Monitor may be shared with the Major Creditors provided that they have executed a confidentiality, non-disclosure and non-use agreement (“NDA”) in form and substance satisfactory to the Plan Sponsor, acting reasonably.</p> <p>A Major Creditor who has executed an NDA and who is seeking additional financial records and information from the Plan Sponsor may submit a request for same to the Monitor, and the Monitor may make that request to the Plan Sponsor. For the avoidance of doubt, the Monitor may, in its discretion, decline to send to the OTE LP Group an information request which, in the reasonable view of the Monitor, is improper or irrelevant. The exercise of discretion by the Monitor shall be reviewable by the CCAA Court.</p>
14	Covenants	<p>Subject to the right to carry on business in the ordinary course, the Plan Sponsor shall be subject to the following covenants while any part of the Principal Note amount remains outstanding:</p> <ul style="list-style-type: none"> (a) The Plan Sponsor shall use commercially reasonable efforts to operate and carry on business in a manner consistent with its Business Plan; (b) The Plan Sponsor shall fulfill its obligations to provide to the Monitor annual and, if requested by the Monitor, <i>ad hoc</i> reporting in accordance herewith; (c) The Plan Sponsor shall report to the Monitor in respect of any non-compliance with any of the Definitive Documents or non-compliance with its Business Plan, including any issue, event or condition which caused or could reasonably be expected to cause a Material Adverse Effect on the Plan Sponsor or that constitutes an Event of Default; and, (f) The chief financial officer of the Plan Sponsor shall certify that the information provided to the Monitor by the Plan Sponsor pursuant hereto is true and correct to the best of their knowledge,

		<p>information and belief;</p> <p>(g) The Plan Sponsor shall conduct its business in good faith with a view to fulfilling its obligations pursuant to the Definitive Documents;</p> <p>(h) The Plan Sponsor shall not create, incur, assume or suffer to exist or otherwise become liable for any Indebtedness, otherwise than in the ordinary course of business, without the prior written consent of the Monitor; and,</p> <p>(i) The Plan Sponsor shall not create, incur, assume, suffer to exist or otherwise become bound by or subject to any Encumbrance upon any of its properties and assets other than a Permitted Encumbrance, without the prior written consent of the Monitor.</p>								
15.	<p>Timing of the Plan Sponsor's Delivery of Business Plan, and Financial Statements to Monitor</p>	<p>The Plan Sponsor shall deliver the information referenced below to the Monitor by no later than the dates specified:</p> <table border="1" data-bbox="708 1077 1417 1541"> <thead> <tr> <th data-bbox="708 1077 1065 1146">Financial Documents</th> <th data-bbox="1065 1077 1417 1146">Due Date</th> </tr> </thead> <tbody> <tr> <td data-bbox="708 1146 1065 1362">Annual Financial Statements and related information (Assuming a year-end of December 31)</td> <td data-bbox="1065 1146 1417 1362">March 31</td> </tr> <tr> <td data-bbox="708 1362 1065 1472">Business Plan provided annually</td> <td data-bbox="1065 1362 1417 1472">April 30</td> </tr> <tr> <td data-bbox="708 1472 1065 1541">Calculation of Free Cash</td> <td data-bbox="1065 1472 1417 1541">May 31</td> </tr> </tbody> </table>	Financial Documents	Due Date	Annual Financial Statements and related information (Assuming a year-end of December 31)	March 31	Business Plan provided annually	April 30	Calculation of Free Cash	May 31
Financial Documents	Due Date									
Annual Financial Statements and related information (Assuming a year-end of December 31)	March 31									
Business Plan provided annually	April 30									
Calculation of Free Cash	May 31									
16.	<p>Limitations of the Monitor</p>	<p>(a) The Major Creditors may not rely upon any written or oral communications of the Monitor as representations, advice, assurances or guarantees in relation to the financial information provided by the Plan Sponsor while the Principal Note Amount remains outstanding; and</p>								

		<p>(b) The Monitor shall not conduct an audit or other assurance engagement, or otherwise attempt to verify the accuracy or completeness of the financial information in the Sponsor's Annual Financial Statements, Business Plan, or any other information produced by the Plan Sponsor in response to an <i>ad hoc</i> request from the Monitor.</p>
17	Jurisdiction of CCAA Court and Procedure for Dispute Resolution	<p>After the Plan Implementation Date, the CCAA Court shall retain jurisdiction over the CCAA Proceedings, be seized of the implementation of the CCAA Plan and have exclusive supervisory jurisdiction over the administration of the restructuring proposal, until such time as the Principal Note Amount has been paid in full.</p> <p>All disagreements in respect of the CCAA Plan shall be addressed in and determined by the CCAA Court, provided that the court may, at the request of a party or on its own motion, refer the disagreement to binding arbitration, and in that event the Court shall select an arbitrator and may establish all or part of the process for the arbitration or leave the process to the discretion of the arbitrator. Responsibility for the costs of the arbitration shall be in the discretion of the court or the arbitrator, as the court may direct. The only parties having standing to participate in any arbitration or CCAA Court proceeding conducted in respect of the CCAA Plan are the Plan Sponsor, the Monitor, and, with leave of the court, Major Creditors.</p>
18	Events of Default	<p>The following events shall constitute an “Event of Default” on the part of the Plan Sponsor under the Plan Note, subject, where applicable, to the Cure Period:</p> <p>(a) Failure to pay or cause any Annual Note Payment or any portion thereof to be paid when due in accordance with the terms of the Plan Note;</p> <p>(b) Failure to provide financial or other information disclosure as contemplated herein, or to meet with the Monitor as contemplated herein;</p> <p>(c) Any representation or warranty made by the Plan Sponsor in any report, certificate, financial statement or other instrument, agreement or document furnished pursuant hereto is false,</p>

		<p>incorrect, incomplete or misleading in any material respect as of the date that the representation or warranty was made or deemed to be made;</p> <p>(d) Failure to reasonably co-operate with the Monitor in regard to the implementation of the restructuring proposal;</p> <p>(e) Without the prior written consent of the Monitor, the Plan Sponsor transfers, other than by way of Ordinary Course Divestitures, any or all of its assets and business to any other entity including a related or unrelated company, or sells or otherwise disposes of its respective assets, that are material to the conduct of the ordinary course of business;</p> <p>(f) The Plan Sponsor ceases or threatens to cease to carry on its business or admits its inability to pay its indebtedness generally, or is insolvent or admits that it is insolvent;</p> <p>(g) Without the prior written consent of the Monitor, any arrangement not permitted by the Definitive Documents is proposed involving a reclassification, reorganization, change or conversion of the Plan Sponsor's shares or its consolidation with or into another entity;</p> <p>(h) A judgment, writ of execution, garnishment, sequestration, distress, attachment or similar process is issued or levied for the payment of money in a sum which exceeds \$2,000,000 against the Plan Sponsor, and the same is not released, bonded, satisfied, discharged, vacated, accepted for payment by an insurer or otherwise stayed within 30 days from the date of notice of entry thereof;</p> <p>(i) Any remedial order that causes or would reasonably be expected to cause a Material Adverse Effect is issued by any Governmental Authority in respect of the Plan Sponsor to any environmental law;</p> <p>(j) The Plan Sponsor violates any legal requirement</p>
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		<p>which results in the issuance of an order or the cancellation of any license or certificate or approval by a Governmental Authority that causes or would reasonably be expected to cause a Material Adverse Effect;</p> <p>(k) The Plan Sponsor conducts its business and operations, divests assets, rearranges ownership, alters its corporate structure and/or operational practices either directly or indirectly, in any manner that circumvents or is adverse to the intention underlying the Restructuring Proposal, including the ability of the Plan Sponsor to pay the Principal Note Amount in full;</p> <p>(l) The Plan Sponsor creates, incurs, assumes, suffers to exist or otherwise becomes bound by or subject to any Encumbrance upon any of its properties and assets other than a Permitted Encumbrance;</p> <p>(m) An encumbrancer pursuant to an Encumbrance takes possession of, or forecloses or retains, or sells or otherwise disposes of, or otherwise proceeds to enforce an Encumbrance over any of the property or assets of the Plan Sponsor; or</p> <p>(n) Failure of the Plan Sponsor to comply with an order, decision or award made by the CCAA Court or an arbitrator appointed by the CCAA Court.</p>
19	Cure of Events of Default	The discontinuance or correction of an Event of Default, within any applicable cure period under the Plan Note (the “ Cure Period ”) shall constitute a cure thereof.
20	Remedies	<p>Where an Event of Default has occurred and the Plan Sponsor has failed to cure such Event of Default within the Cure Period:</p> <p>(a) The Monitor shall be immediately entitled to exercise all rights and remedies available pursuant to the Definitive Documents and the laws of Ontario and the laws of Canada, including applying to the CCAA Court for such relief as the CCAA Court finds appropriate;</p>

		<p>(b) During the pendency of any proceeding in the CCAA Court relating to the occurrence of an Event of Default, the Plan Sponsor shall continue to comply with its obligations pursuant to the Definitive Documents, including the obligation to pay the Annual Note Payments to the Monitor; and</p> <p>(c) In the event that the CCAA Court finds that an Event of Default has occurred on the part of the the Plan Sponsor, then the balance remaining to be paid of the Principal Note Amount shall be deemed to be immediately due and payable.</p> <p>The Monitor shall be entitled to apply to the CCAA Court for such relief as the CCAA Court finds appropriate in respect of an Event of Default.</p>
21	Other Terms and Further Assurances	The Plan Sponsor, the Monitor, the Major Creditors, and the OTE LP Group, as applicable, shall consider any other reasonable non-monetary terms and conditions as may be proposed as part of the Restructuring Proposal, and shall provide such further assurances and do such things as may be reasonably required to give effect to the object of the CCAA Plan.
22	No Admission of Liability	Nothing in this Term Sheet or in any other Definitive Document is or shall be deemed to be an admission of fact or liability of any kind.
23	Financial Conditions to Plan Implementation	The Restructuring Proposal shall be subject to the following conditions as at Plan Implementation, which are subject to waiver by the Plan Sponsor, in writing: (a) verification that the lease of the blending sites at Whitefish, Tyendinaga and Six Nations are current and in good standing and that the blending sites remain in good working condition; (b) all Priority Claims have been paid, leaving net cash of not less than \$2,000,000; (c) there shall have been no sale or alienation of assets of the OTE LP Group post-filing (for the avoidance of doubt, the assets listed at Schedule 1 to the Bid Process are not assets of the OTE LP Group); (d) the Plan Sponsor shall have acquired all licences necessary for the operation of the business OTE LP Group; and, (e) such other conditions as the Plan Sponsor may specify following completion of its due diligence review, acting

		reasonably.
24.	Other Approvals and Conditions to Plan Implementation	The restructuring proposal shall be subject to such other customary approvals and conditions, including, without limitation, relating to the approval of the CCAA Plan by each class of affected creditors, the sanction of the CCAA Plan by the CCAA Court (including the issuance of the Plan Sanction Order, the Approval and Vesting Order and the Assignment Order), and reasonable regulatory approvals, as applicable.
25.	Foreign Recognition	If determined to be necessary or advisable by the Plan Sponsor or the Monitor, the Plan Sponsor, the OTE LP Group or the Monitor, as applicable, shall be entitled to seek the recognition of the Restructuring Proposal and any related order made in a CCAA Proceedings in any foreign jurisdiction, including without limitation, pursuant to Chapter 15 of the U.S. Bankruptcy Code. The Major Creditors agree not to oppose any application to seek such recognition.
26.	Notices	The CCAA Plan shall provide for the manner of giving all notices, requests, consents and other communications delivered pursuant to the terms of this Term Sheet.
27.	Applicable Law	This Term Sheet, the restructuring proposal and all Definitive Documents that give effect to the Restructuring Proposal shall be governed and construed in accordance with the laws of the Province of Ontario and the applicable laws of Canada.
28.	Documentation of Restructuring Proposal	Any agreements in respect of the principal terms and conditions set out herein are expressly conditional upon reaching agreement on the balance of the terms of the Restructuring Proposal in form and content satisfactory to all concerned.
29.	Currency	All monetary amounts are expressed in Canadian dollars.

SCHEDULE "A"**DEFINITIONS**

SEE ATTACHED

DRAFT: OCTOBER 17, 2023

Without prejudice, confidential and not subject to disclosure, use or reliance, except with the permission of Paliare Roland Rosenberg Rothstein LLP

COURT FILE NO. CV-23-00693758-00CL

**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
ORIGINALTRADERS ENERGY LTD. and 2496750 ONTARIO INC.**

Applicants

CCAA PLAN DEFINITIONS

"2658658" has the meaning given in s. 1 of the Term Sheet;

"Accepted Claim" means a Claim in the CCAA Proceedings that has been settled or proven in accordance with the Claims Procedure Order or such other order of the CCAA Court as may be applicable;

"Accepted Creditor" means a creditor having an Accepted Claim, in respect of that Claim;

"Administration Charge" has the meaning given in the Initial Order;

"Agent" has the meaning given in s. 1 of the Term Sheet;

"Agent Appointment" has the meaning given in s. 5 of the Term Sheet;

"Aggregate Plan Consideration" has the meaning given in s. 3 of the Term Sheet;

"Annual Financial Statement" has the meaning given in s. 10 of the Term Sheet;

"Annual Note Payment" has the meaning given in s. 1 of the Term Sheet;

"Approval and Vesting Order" means an order of the CCAA Court, in form and substance satisfactory to the Plan Sponsor, approving the transfer of assets contemplated by the CCAA Plan and vesting title thereto in the Plan Sponsor;

"Assignment Order" has the meaning given in s. 1 of the Term Sheet;

"ASPE" has the meaning given in s. 6 of the Term Sheet;

"Bid Process" means the sale process approved by order of the CCAA Court in the CCAA Proceedings dated October 12, 2023.

“**Boat Sale Proceeds**” has the meaning given in s. 4 of the Term Sheet;

“**Business Plan**” has the meaning given in s. 10 of the Term Sheet;

“**CCAA**” means the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended;

“**CCAA Court**” means the Ontario Superior Court of Justice (Commercial List) in respect of its supervision of the proceeding bearing court file no. CV-23-00693758-00CL;

“**CCAA Plan**” means the plan of compromise or arrangements filed with the CCAA Court further to the presentation of this Term Sheet;

“**Claim**” has the meaning given in the Claims Procedure Order;

“**Claims Procedure Order**” means the Claims Procedure Order of Justice Osborne dated April 27, 2023, as amended by paragraphs 8-12 of the Endorsement of Justice Kimmel dated October 12, 2023;

“**Contractual Releases**” has the meaning given in s. 8 of the Term Sheet;

“**Cure Period**” has the meaning given in s. 19 of the Term Sheet;

“**Definitive Documents**” means the documents identified in s. 2 of the Term Sheet;

“**Deposit**” has the meaning given in s. 4 of the Term Sheet;

“**Directors Charge**” has the meaning given in the Initial Order;

“**Encumbrance**” means a mortgage, floating charge, deed of trust, lien, pledge, hypothecation, assignment, security interest, right of offset or any other encumbrance, charge, or transfer of, on or affecting the property or assets of a member of the OTE Group or their successor under the CCAA Plan, as applicable, or any interest therein;

“**Event of Default**” means the events of default identified in s. 18 of the Term Sheet;

“**Filing Date**” means January 30, 2023;

“**Foreign Tax Rebates**” has the meaning given in s. 1 of the Term Sheet;

“**Free Cash**” has the meaning given in s. 6 of the Term Sheet;

“**Governmental Authority**” means any government, regulatory authority, governmental department, agency, commission, bureau, official, minister, Crown corporation, court, board, tribunal or dispute settlement panel or other law, rule or regulation-making organization or entity: (a) having or purporting to have jurisdiction on behalf of any nation, province, territory or state or any other geographic or political subdivision of any of them; or (b) exercising, or

entitled or purporting to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power;

“Information Requests” has the meaning given in s. 11 of the Term Sheet;

“Initial Cash Payment” has the meaning given in s. 1 of the Term Sheet;

“Initial Creditor Cash Pool” has the meaning given in s. 1 of the Term Sheet;

“Initial Order” means the order of the CCAA Court commencing the CCAA Proceedings, as amended from time to time;

“Initial Plan Consideration” has the meaning given in s. 1 of the Term Sheet;

“Major Creditors” means the Ontario Ministry of Finance and/or such other creditors identified in the CCAA Plan with the agreement of the Plan Sponsor;

“Material Adverse Effect” means an event or condition that caused or would reasonably be expected to have a material adverse effect on: (a) the assets and liabilities of a member of the OTE Group or their successor under the CCAA Plan, as applicable, or the use or operation thereof; (b) the business, profits, operations or condition (financial or otherwise) of a member of the OTE Group or their successor under the CCAA Plan, as applicable; (c) the ability of a member of the OTE Group or their successor under the CCAA Plan, as applicable, to perform its obligations in any material respect under any of the Definitive Documents to which it is a party or by which it is bound;

“Monitor” means KPMG Inc. in its capacity as court-appointed Monitor in the CCAA Proceedings, or such other entity as may be appointed by the CCAA Court to administer the implementation of the CCAA Plan;

“NDA” has the meaning given in s. 13 of the Term Sheet;

“Ordinary Course Divestures” means divestures of assets made in the ordinary course of business;

“OTE GP” has the meaning given in s. 1 of the Term Sheet;

“OTE Group” has the meaning given in s. 1 of the Term Sheet;

“OTE Logistics” has the meaning given in s. 1 of the Term Sheet;

“OTE LP” has the meaning given in s. 1 of the Term Sheet;

“OTE USA” has the meaning given in s. 1 of the Term Sheet;

“**Outside Date**” means March 31, 2024 or such later date as the Plan Sponsor designate, subject to agreement of the Monitor or approval of the CCAA Court;

“**Pending Litigation**” has the meaning given in s. 9 of the Term Sheet;

“**Permitted Encumbrance**” shall have the meaning given in the Promissory Note and any related agreement or other related instrument;

“**Plane Sale Proceeds**” has the meaning given in s. 4 of the Term Sheet;

“**Plan Implementation Certificate**” means the certificate to be filed with the CCAA Court certifying that the CCAA Plan has been fully implemented;

“**Plan Implementation**” means the implementation of the CCAA Plan;

“**Plan Implementation Date**” means the date to be designated by the Plan Sponsor, acting reasonably, on which all conditions precedent to the implementation of the CCAA Plan has been satisfied, not later than the Outside Date;

“**Plan Sanction Order**” means the order of the CCAA Court sanctioning the CCAA Plan;

“**Plan Sponsor**” has the meaning given in s. 1 of the Term Sheet;

“**Plan Note**” has the meaning given in s. 1 of the Term Sheet;

“**Principal Note Amount**” has the meaning given in s. 1 of the Term Sheet;

“**Priority Claims**” means Claims that are the subject of the Administration Charge, the Directors’ Charge, the RBC Security, such further Court-ordered charges in the CCAA Proceedings as the Plan Sponsor may agree, and such other Claims as may be required by the terms of the CCAA to be paid as a condition to the sanction of the CCAA Plan;

“**RBC Security**” has the meaning given in the Initial Order;

“**Release**” has the meaning given in s. 8 of the Term Sheet;

“**Recovered Tax Rebates**” has the meaning given in s. 1 of the Term Sheet;

“**Released Parties**” means the Plan Sponsor, Glenn Page, Mandy Cox, Brian Page, Kellie Hodgins, 2688658 Ontario Inc., 2745384 Ontario Inc., Alderville Gas Ltd., Oneida Gas Ltd, Sarnia Gas Ltd., Gen 7 Brands International Inc., Oneida Gen7 LP, French River Gen7 LP, Rankin Gen7 LP, Jocko Point Gen7 LP, Curve Lake Gen7 LP, Sarnia Gen 7 LP, Walpole Gen7 LP, Roseneath Gen7 LP, 2700287 Ontario Inc., OTE USA LLC, OT Energy Inc., 7069847 Canada Limited, and 11222074 Canada Ltd., any entities owned, controlled or related to any of the foregoing, any trusts owned, controlled or related to any of the foregoing, and all of their spouses, heirs, executors, predecessors in interest, affiliates, administrators, trustees, successors,

assigns, agents, partners, insurers, subrogees, professional advisors and legal representatives, and such other persons or entities as the Plan Sponsor may identify;

“Residual Rebate Recoveries” has the meaning given in s. 1 of the Term Sheet;

“Restructuring Proposal” has the meaning given in s. 1 of the Term Sheet;

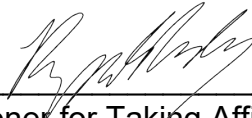
“Subsequent Plan Recoveries” has the meaning given in s. 1 of the Term Sheet;

“Term Sheet” means this term sheet presented by OTE USA in respect of a CCAA Plan to be filed in the CCAA Proceedings, sponsored by the Plan Sponsor;

“Trust Account” has the meaning given in s. 8 of the Term Sheet;

“Working Capital” has the meaning given in s. 5 of the Term Sheet

This is Exhibit "C"
in the Affidavit of Brian Page
sworn the 29th day of November,
2023



Commissioner for Taking Affidavits, etc.

September 1, 2023

VIA EMAIL

AIRD & BERLIS LLP

Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON
M5J 2T9

Attention: Steven Graff

**Lawyers for Original Traders Energy LTD. and
2496750 Ontario Inc.**

BENNETT JONES LLP

3400 One First Canadian Place
P.O. Box 130
Toronto, ON
M5X 1A4

Attention: Raj. S. Sahni

Counsel for the Monitor

Dear Counsel:

Re: Original Traders Energy Ltd et al.; Court File No. CV-23-00693758-00CL

We are writing with respect to the referenced proceedings. As you know, we are lawyers for OTE USA LLC ("**OTE USA**"), a creditor (perhaps the largest creditor) in the proceedings.

It is has been suggested to us that Scott Hill has been taking steps to transition the business of Original Traders Energy LP and OTE Logistics LP businesses to Parkland Corporation and to Joseph Haulage Canada Corp., respectively, as of September 15, 2023, or thereabouts.

We are not aware of any authorization for Mr. Hills' conduct. To the contrary, paragraph 5 of the Initial Order of Justice Osborne of the Superior Court of Justice (Commercial List), dated January 30, 2023 (the "**Initial Order**"), directs Original Traders Energy Ltd., OTE Logistics LP, and Original Traders Energy LP (collectively the "**OTE Group**") to 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, and to continue to carry on business in a manner consistent with the preservation of their business and Property.

Accordingly, we are writing to seek your confirmation that the OTE Group is complying and will continue to comply with paragraph 5 of the Initial Order, and to seek your advice as to the steps that

are being taking to preserve value of the businesses for the creditors in these proceedings, including OTE USA. In this regard, I note that, without necessarily agreeing that a divestiture or liquidation represents the most favourable outcome for stakeholders, OTE USA is aware of a number of third parties who may be interested in bidding for or buying the property, assets and undertakings of Original Traders Energy LP and/or OTE Logistics LP as going concerns, including as a stalking horse bidder.

Yours very truly,

Paliare Roland Rosenberg Rothstein LLP



Massimo (Max) Starnino

MS:JB

- c. J. Berger
- M. Jilesen and J. Chen
- J. Orkin and N. Shelsen
- client

This is Exhibit "D"
in the Affidavit of Brian Page
sworn the 29th day of November,
2023



Commissioner for Taking Affidavits, etc.

From: Raj Sahni <SahniR@bennettjones.com>
Sent: Friday, September 8, 2023 4:54 PM
To: Max Starnino; Monique Jilesen
Cc: sgraff@airdberlis.com; Joseph Berger; Jonathan Chen; Natai Shelsen; Jessica Orkin; mhenderson@airdberlis.com; Tamie Dolny; Paul van Eyk (pvaneyk@kpmg.ca); Lau, Duncan
Subject: RE: Original Traders Energy Ltd et al.
Attachments: 4966314_2 [IWOV-PRiManage.FID390548]; Original Traders Energy Ltd et al.

Dear Counsel,

We write in response to your letters of September 1/23 (from Mr. Starnino) and September 7/23 (from Ms Jilesen). The Monitor informs us that it is not aware of any transfer of the ownership of business or assets of the OTE Group in contravention of paragraph 5 of the Initial Order. In addition, the Monitor has spoken with Mr. Scott Hill and we have corresponded with counsel for the OTE Group to ensure that the OTE Group's management are aware that any such transfer of ownership outside of the ordinary course of business is not permitted without authorization of the Court.

The Monitor is preparing a report to the Court to update on the status of the OTE Group's operations and expects to file that report and serve it on the service list prior to the end of September.



Raj Sahni
Partner*, Bennett Jones LLP
*Denotes Professional Corporation

3400 One First Canadian Place, P.O. Box 130, Toronto, ON, M5X 1A4
T. [416 777 4804](tel:4167774804) | F. [416 863 1716](tel:4168631716) | M. [416 618 4804](tel:4166184804)
E. sahnir@bennettjones.com
BennettJones.com

This is Exhibit "E"
in the Affidavit of Brian Page
sworn the 29th day of November, 2023



Commissioner for Taking Affidavits, etc.

September 15, 2023

BY EMAIL

Parkland Corporation
240 – 4th Ave S.W. Suite 1800
Calgary, AB
T2P 4H4

Attn: Ian White, President Parkland Canada
ian.white@parkland.ca

Tariq Remtulla, Senior Vice President
General Counsel
tariq.remtulla@parkland.ca

Dear Sirs:

Re: Original Traders Energy Ltd et al.; Ontario Superior Court File No. CV-23-00693758-00CL (the “CCAA Proceedings”)

We are lawyers for OTE USA LLC (“**OTE USA**”), a creditor in the referenced CCAA Proceedings, and we are writing with respect thereto. OTE USA wishes to put you on notice that it has been led to understand that Parkland’s employees and/or representatives are (or have been) engaged in discussions with representatives of Original Traders Energy LP (“**OTE LP**”), in respect of the transition of OTE LP’s fuel distribution business to Parkland. We are further advised by the Monitor’s counsel in the CCAA Proceedings that the Monitor is not aware of such dealings with Parkland.

If the discussions described above have taken place, such conduct by OTE LP and/or its representatives and by Parkland would be in breach of paragraph 5 of the Initial Order made in the Proceedings by Justice Osborne of the Superior Court of Justice (Commercial List), dated January 30, 2023, (the “**Initial Order**”), which directs OTE LP, and its general partner Original Traders Energy Ltd., among others, to 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, and to continue to carry on business in a manner consistent with the preservation of their business and Property (as defined therein). As such, the conduct would be actionable as an unlawful conspiracy.

Accordingly, we require that Parkland cease and desist in all such activity, and that you immediately

undertake an investigation into such conduct and take all steps necessary to preserve all documents (as defined in Rule 30.01(1)(a) of the Ontario *Rules of Civil Procedure*) in respect of Parkland's dealings in respect of OTE LP, Scott Hill or Miles Hill, including, without limiting the foregoing, any recorded information in either hard copy or electronic format such as sound and audio recordings, email, text messages, photos, handwritten notes, spreadsheets and data housed in accounting applications and databases, and including, without limitation, steps to:

- (a) ensure that relevant documents (including electronically stored information) are not destroyed, lost, or relinquished to others, either intentionally or inadvertently, such as through the implementation of an ordinary course document retention/destruction policy;
- (b) ensure that relevant documents are not modified, including any relevant documents that are used on an ongoing basis in the operation of business; and
- (c) ensure that relevant documents remain accessible.

To be clear, OTE USA's preference is not to engage in litigation with Parkland (though it is prepared to do so where necessary, to protect its interests, and OTE USA is not necessarily opposed to a sale of OTE LP's assets and undertakings to Parkland. However, such a transaction should be conducted for the benefit of creditors, in accordance with the terms of the Initial Order, and as part of a transparent and competitive process approved by future court order and conducted under the supervision of the Monitor.

Please confirm your receipt of this letter, and that Parkland and its employees and representatives will cease any and all interference in respect of the undertakings of OTE LP, including, without limitation, any operations, distribution services, and invoicing of OTE LP's customers, and will preserve information, as indicated above, pending further direction from the court and an investigation into the conduct of Scott Hill.

Yours very truly,

Paliare Roland Rosenberg Rothstein LLP



Massimo (Max) Starnino

MS:JB

- c. J. Berger
- R. Sahni (Bennett Jones, Lawyers for KPMG as Monitor)
- S. Graff (Aird Berlis, Lawyers for OTE LP)
- M. Jilesen and J. Chen (Lenczner Slaght, Lawyers for Glenn Page and 2658658 Ontario Inc.)

J. Orkin and N. Shelsen (Goldblatt Partners, Lawyers for Mandy Cox and others)
J. Smith (Goldman Sloan, Lawyers for Brian Page and 11222074 Canada Ltd.)
client

This is Exhibit "F"
in the Affidavit of Brian Page
sworn the 29th day of November, 2023



Commissioner for Taking Affidavits, etc.

September 15, 2023

BY EMAIL

Joseph Haulage Canada Corporation
590 South Service Road
Stoney Creek, ON
L8E 2W1

Attn: Geoff Joseph – President
gjoseph@josephhaulage.com

Dear Sirs:

Re: Original Traders Energy Ltd et al.; Court File No. CV-23-00693758-00CL (the “CCAA Proceedings”)

We are lawyers for OTE USA LLC (“**OTE USA**”), a creditor in the referenced CCAA Proceedings, and we are writing with respect thereto, to put you on notice that OTE USA has been led to understand that Joseph Haulage Canada Corporation (“**JHCC**”) is (or has been) engaged in discussions with representatives of OTE Logistics LP (“**Logistics LP**”), in respect of the transition of the business of Logistics LP, including, without limitation, its drivers and capital equipment, to JHCC. We are further advised by counsel to the Monitor in the CCAA Proceedings that the Monitor is not aware of such dealings with JHCC.

If the discussions or transactions described above have taken place, such conduct by Logistics LP and/or its representatives and by JHCC would be in breach of paragraph 5 the Initial Order made in the CCAA Proceedings by Justice Osborne of the Superior Court of Justice (Commercial List), dated January 30, 2023, (the “**Initial Order**”), which directs Logistics LP and its general partner, among others, to 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, and to continue to carry on business in a manner consistent with the preservation of their business and Property (as defined therein). As such, the conduct would be actionable as an unlawful conspiracy.

Accordingly, we require that JHCC cease and desist in all such activity, and that you immediately undertake an investigation and take all steps necessary to preserve all documents (as defined in Rule 30.01(1)(a) of the Ontario *Rules of Civil Procedure*) in respect of JHCC’s dealings in respect of Logistics LP, Scott Hill or Miles Hill, including, without limiting the foregoing, any recorded information

in either hard copy or electronic format such as sound and audio recordings, email, text messages, photos, handwritten notes, spreadsheets and data housed in accounting applications and databases, and including, without limitation, steps to:

- (a) ensure that relevant documents (including electronically stored information) are not destroyed, lost, or relinquished to others, either intentionally or inadvertently, such as through the implementation of an ordinary course document retention/destruction policy;
- (b) ensure that relevant documents are not modified, including any relevant documents that are used on an ongoing basis in the operation of business; and
- (c) ensure that relevant documents remain accessible.

To be clear, OTE USA's preference is not to engage in litigation with JHCC, though it is prepared to do so where necessary to protect its interests.

Please confirm your receipt of this letter, and that JHCC and its employees and representatives will cease all interference in respect of the undertakings of Logistics LP, including, without limitation, servicing Logistics LP's customers, and will preserve information, as indicated above, pending further direction from the court, including, without limitation, in respect of an investigation into the conduct of Scott Hill.

Paliare Roland Rosenberg Rothstein LLP



Massimo (Max) Starnino
MS:JB

- c. J. Berger
R. Sahni (Bennett Jones, Lawyers for KPMG as Monitor)
S. Graff (Aird Berlis, Lawyers for OTE LP)
M. Jilesen and J. Chen (Lenczner Slaght, Lawyers for Glenn Page and 2658658 Ontario Inc.)
J. Orkin and N. Shelsen (Goldblatt Partners, Lawyers for Mandy Cox and others)
J. Smith (Goldman Sloan, Lawyers for Brian Page and 11222074 Canada Ltd.)
client

This is Exhibit "G"
in the Affidavit of Brian Page
sworn the 29th day of November, 2023



Commissioner for Taking Affidavits, etc.

September 21, 2023

Sent via Email (*max.starnino@paliareroland.com*)

Paliare Roland Rosenberg Rothstein LLP
155 Wellington Street West, 35th Floor
Toronto ON M5V 3H1

Attention: Massimo (Max) Starnino

Dear Mr. Starnino:

**Re: In the Matter of Original Traders Energy Ltd. (“OTE LP”)
Court File No. CV-23-00693758-00CL (the “CCAA Proceedings”)**

We act for Parkland Corporation (“Parkland”), and have been provided with a copy of your letter dated September 15, 2023 to Messrs. White and Remtulla. Please direct any future correspondence on this matter to our attention.

As a continuing fuel supplier to OTE LP, Parkland is well aware of the ongoing CCAA Proceedings and of the terms set out in the Initial Order made in those proceedings, including the requirement that OTE LP remain in possession and control of its assets, undertakings and properties. Parkland has and will continue to abide by its obligations under the Initial Order and any subsequent orders made by the court.

In this context, your client’s understanding that Parkland has engaged in discussions with OTE LP regarding the transition of its fuel distribution business to Parkland is inaccurate, and the unnamed source of this understanding is mistaken. As noted above, Parkland and OTE LP have an ongoing supply relationship and frequently engage in discussions regarding OTE LP’s fuel supply needs. In the course of those discussions, Scott Hill represented that there was a possibility that OTE LP’s business could be transitioned to a new entity as part of the CCAA Proceedings, and asked whether, in the event such a transition occurred, Parkland would be able to continue supplying fuel to OTE LP’s successor. Mr. Hill also inquired as to whether it would be possible for Parkland to supply fuel directly to OTE LP’s customers over a short period if required in connection with such a transition. Parkland replied that if a new entity was formed to take over OTE LP’s business, Parkland would at that time need to internally consider the possibility of a new fuel supply relationship before commencing any discussions with OTE LP’s successor. These preliminary discussions with Mr. Hill were not advanced any further, and Parkland has not taken any steps to evaluate the possibility raised by Mr. Hill (as there is nothing for Parkland to evaluate presently). There were no discussions about Parkland purchasing any assets of OTE LP or taking over any portion of its fuel distribution business. As such, there is nothing for Parkland to cease and desist.

If the Monitor and the OTE Group determine that a sale or transition process of some or all of OTE LP’s business is in the best interests of its creditors, Parkland will consider at that time whether to participate in such a process. In the interim, Parkland will continue supplying fuel to OTE LP in accordance with the terms of the Initial Order.

Finally, while unnecessary in our view, we confirm that Parkland will take reasonable steps to preserve documents regarding its dealings with representatives of OTE LP from the date of the Initial Order forward. Parkland is prepared to produce any such documents if ordered to do so by the court. We trust this is satisfactory.

Yours truly,
Dentons Canada LLP



Michael Beeforth
Partner

cc: R. Sahni, Bennett Jones LLP (counsel to KPMG as Monitor)
S. Graff, Aird Berlis (counsel to OTE LP)
M. Jilesen and J. Chen, Lenczner Slaght (counsel to Glenn Page and 2658658 Ontario Inc.)
J. Orkin and N. Shelsen, Goldblatt Partners (counsel to Mandy Cox and others)
J. Smith, Goldman Sloan (counsel to Brian Page and 11222074 Canada Ltd.)

This is Exhibit "H"
in the Affidavit of Brian Page
sworn the 29th day of November, 2023



Commissioner for Taking Affidavits, etc.



LEASE AGREEMENT
(COMMERCIAL)

Made the 24th day of August, 2021



BETWEEN

CHI-ZHIINGWAAK BUSINESS PARK INC.

(the “**Landlord**”)

-and-

ORIGINAL TRADERS ENERGY LP

(the “**Tenant**”)

WHEREAS the Landlord has the required legal interest and authority in the premises to grant this Lease to the Tenant, and the Tenant wishes to lease from the Landlord the whole of Lot 13, 14 & 15 as described in Schedule B, on the terms and conditions set forth herein;

NOW THEREFORE, in consideration of the rents, covenants and obligations stipulated herein the Landlord and the Tenant have agreed to enter into a Lease of the premises known municipally as:

**Lot 13, 14 & 15
Business Park Road
Chi-Zhiingwaak Business Park
Naughton, ON
P0M 2M0**

(the “**Premises**”)

1. GRANT OF LEASE

- (a) The Landlord leases the Premises to the Tenant:
- (i) at the Rent set forth in Section 2;
 - (ii) for the Term set forth in Section 3; and
 - (iii) subject to the conditions and in accordance with the covenants, obligations, and agreements herein.
- (b) The Landlord represents and warrants that it has the required legal interest and authority in the Premises to grant this Lease. A copy of the Head Land Lease Agreement that has been approved by Chief and Council is attached as Schedule C.

2. RENT

- (a) **“Rent”** means the Basic Rent, the Additional Rent and Royalty.
- (b) The Tenant covenants to pay to the Landlord, during the Term of this Lease, rent as follows:
 - (i) during the first five (5) years of the Term, being Lease Years 1 to 5 (as hereinafter defined), the sum of \$138,600.00 per annum, payable monthly in advance in equal instalments of \$11,550.00 based on \$2500 per acre for the total of 4.62 acres (the “Rentable Area”) on the first day of each and every month, commencing on September 1, 2021. The initial lease year shall be the period that commences on the Commencement Date (as hereinafter defined) of this Lease and that ends on the first anniversary of said Commencement Date (the “Lease Year”) and thereafter, each Lease Year shall be a period of twelve calendar months that commences on the anniversary of the said Commencement Date and that ends on the day immediately preceding the next anniversary of the Commencement Date.
 - (ii) during the next five (5) Lease Years, being Years 6 to 10, the rent shall be increased by a percentage equal to the percentage increase in the Consumer Price Index – All Items, for the immediately preceding 5 years. Rent shall be payable monthly in advance of equal instalments on the first day of each and every month, commencing on the first day each and every month;
 - (iii) during the next five (5) Lease Years, being Years 11 to 15, the rent shall be increased by a percentage equal to the percentage increase in the Consumer Price Index – All Items, for the immediately preceding five (5) years. Rent shall be payable monthly in advance of equal instalments on the first day of each and every month, commencing on the first day each and every month;
 - (iv) during the next five (5) Lease Years, being Years 16 to 20, the rent shall be increased by a percentage equal to the percentage increase in the Consumer Price Index – All Items, for the immediately preceding five (5) years. Rent shall be payable monthly in advance of equal instalments on the first day of each and every month, commencing on the first day each and every month;
 - (v) during the next five (5) Lease Years, being Years 21 to 25, the rent shall be increased by a percentage equal to the percentage increase in the Consumer Price Index – All Items, for the immediately preceding five (5) years. Rent shall be payable monthly in advance of equal instalments on the first day of each and every month, commencing on the first day each and every month;
 - (vi) during the next five (5) Lease Years, being Years 26 to 30, the rent shall be increased by a percentage equal to the percentage increase in the Consumer Price Index – All Items, for the immediately preceding five (5) years. Rent shall be payable monthly in advance of equal instalments on the first day of each and every month, commencing on the first day each and every month;

- (vii) during the next five (5) Lease Years, being Years 31 to 35, the rent shall be increased by a percentage equal to the percentage increase in the Consumer Price Index – All Items, for the immediately preceding five (5) years. Rent shall be payable monthly in advance of equal instalments on the first day of each and every month, commencing on the first day each and every month for the balance of the Term;

(collectively, the “**Basic Rent**”).

(c) The Tenant further covenants to pay all other sums required by this Lease to be paid by them and agrees that all amounts payable by the Tenant to the Landlord or to any other party pursuant to the provisions of this Lease shall be deemed to be additional rent (“**Additional Rent**”) whether or not specifically designated as such in this Lease.

(d) The Landlord and the Tenant agree that it is their mutual intention that this Lease shall be a completely carefree net lease for the Landlord:

- (i) and to effect the said intention of the parties, where the following services are supplied by and/or the following expenses are paid by the Landlord, the Tenant promises to pay the following expenses related to the Premises as Additional Rent;
 - (A) services supplied leading to the Premises, including snow clearing (including removal from abutting roadways and walkways), provided that this does not in any way oblige the Landlord to provide any services, unless otherwise agreed in this Lease;
 - (B) any tax or duty duly imposed upon or collectable by the Landlord which is measured by or based in whole or in part directly upon the Rent;
 - (C) the Landlord's reasonable administration and supervisory fee of three percent (3%) of the Basic Rent payable; and
 - (D) any real property taxes, rates, duties and assessments as may be duly imposed by Atikameksheng Anishnawbek First Nation (“AAFN”) in respect of the Premises. For clarity, the parties confirm that as of today’s date, no such tax, rates, duties or assessments are currently applicable under this Lease;
- (ii) and if any of the foregoing charges are invoiced directly to the Tenant, the Tenant shall pay same as and when they become due and produce proof of payment to the Landlord immediately if requested to do so, but the Tenant may contest or appeal any such charges at the Tenant's own expense;
- (iii) and the Tenant hereby agrees to indemnify and protect the Landlord from any liability accruing to the Landlord in respect of the expenses payable by the Tenant as provided herein;

- (iv) and if the Tenant fails to make any of the payments required by this Lease then the Landlord may make such payments and charge to the Tenant as Additional Rent the amounts paid by the Landlord, and if such charges are not paid by the Tenant on demand the Landlord shall be entitled to the same remedies and may take the same steps for recovery of the unpaid charges as in the event of Rent in arrears.
- (e) Prior to the commencement of each Lease Year, the Landlord shall notify the Tenant of its reasonable and bona fide estimate of Additional Rent for that Lease Year. The Additional Rent is estimated to be \$10,000.00 for the initial Lease Year. The Tenant shall pay such estimated amount of Additional Rent in equal monthly instalments in advance on the same dates stipulated for payment of Basic Rent in Section 2(b). From time to time during a Lease Year the Landlord may, acting reasonably, re-estimate the amount of the Additional Rent and shall fix monthly instalments for the then remaining balance of the Lease Year so that the Landlord's estimate, original or revised, of Additional Rent will have been entirely paid during that Lease Year. The Landlord shall make a final determination of Additional Rent for the relevant Lease Year within one-hundred and twenty (120) days of the Landlord's financial year end and shall provide the Tenant with a statement of the Additional Rent for the relevant Lease Year, which shall be binding upon both parties. The Landlord and the Tenant shall expeditiously make any necessary readjusting payment; provided that the Tenant may not claim a re-adjustment based solely upon any error of estimation, determination or calculation unless claimed in writing within six months after receipt of the statement of Additional Rent for the Lease Year to which the claim relates.
- (f) FUEL ROYALTY
 - (i) The Tenant shall pay a royalty per liter of gasoline or diesel sold from the premises as described in Schedule D (the "**Royalty**").
 - (ii) The Royalty for the month shall be payable to Landlord on the fifteenth day of the following month and shall include details of the payment and calculation of the Royalty in a form satisfactory to the Landlord, acting reasonably.
 - (iii) The Tenant shall provide the Landlord with a copy of the quarterly financial statements associated with the Royalty and an annual comfort letter from its external accountants verifying the liters sold in the preceding year. The Landlord shall be entitled to make reasonable inquiries in connection therewith.
 - (iv) In the event of a dispute regarding the Royalty amount, the Landlord may require an independent audit, at its own expense. If an independent audit of the Royalty should at any time be required, the auditor of the Royalty shall be a certified chartered professional accountant. Should such independent audit of the Royalty reveal a deficiency in excess of five percent (5%) in the calculation and payment of the Royalty owed to Landlord under this Agreement, any audit fees incurred by Landlord with respect to such audit shall be paid by Tenant.
 - (v) Tenant acknowledges its primary obligation to pay the Royalty and Tenant agrees to indemnify, protect and defend Landlord from and against any loss, cost (including legal fees incurred) or liability arising from the performance or failure

of performance by Tenant hereunder or under any contractual or other arrangements entered into by Tenant.

- (vi) The Tenant shall pay the Royalty by delivery of a cheque or draft payable to Landlord's account with a bank to be designated in writing by Landlord.
- (g) All payments to be made by the Tenant pursuant to this Lease shall be delivered to the Landlord at the Landlord's address for service set out in Section 18 or to such other place as the Landlord may from time to time direct in writing.
- (h) The Tenant will, on or before September 1, 2021, pay to the Landlord \$23,100.00, and which amount shall be applied by the Landlord against the first and last month's Basic Rent.
- (i) All Rent in arrears and all sums paid by the Landlord for expenses incurred which should have been paid by the Tenant shall bear interest from the date payment was due, or made, or expense incurred, at a rate per annum equal to the prime commercial lending rate of the Landlord's bank plus five percent (5%).
- (j) The Tenant acknowledges and agrees that the payments of Rent provided for in this Lease shall be made without any deduction or set-off for any reason whatsoever unless expressly allowed by the terms of this Lease or agreed to by the Landlord in writing; and no partial payment by the Tenant which is accepted by the Landlord shall be considered as other than a partial payment on account of Rent owing and shall not prejudice the Landlord's right to recover any Rent owing.
- (k) The Tenant further agrees to pay or shall cause to be paid, in a timely manner on or before the date each payment is due, all accounts for all utilities servicing or consumed at the Premises including, without limitation, fuel, gas, electricity, water, storm sewer, sanitary sewer, waste management, recycling, telephone, and internet service ("Utilities"), directly to the utility provider charged with supplying such Utility. The Tenant shall, within ten (10) days following a request from the Landlord, furnish to the Landlord official receipts from the utility provider, or other evidence reasonably satisfactory to the Landlord, evidencing the payment of such amounts on or before their due dates. The Tenant shall, to the extent possible, have all Utility accounts placed in its name and all bills for Utilities sent by the utility provider to the Tenant. If the Tenant does not pay an amount for Utilities when due, then the Landlord may pay such overdue amounts plus any interest, penalties or late charges imposed by the utility provider on the overdue amounts, and the total amounts so paid by the Landlord shall then be paid by the Tenant to the Landlord as Additional Rent. For clarity, the Tenant shall directly contract for the provision of Utilities.
- (l) During the Term, the Tenant shall be responsible for and pay directly to the utility provider requiring the payment, on or before the date such payment is due, all charges, rates, fees, payments, deposits and security of any kind charged, imposed or required by utility provider relating directly to the development of the land for the Premises and/or the construction of the Premises, including, without limitation, development charges, utility connection fees, front-ending costs, utility deposits and building permit fees.
- (m) The parties agree that the Rentable Area may increase or decrease during the Term upon the completion of negotiations between the parties and a final survey, if any. Upon determination of an increase or decrease in the Rentable Area, there shall be a proportionate increase or decrease,

as the case may be, in the Basic Rent, the calculation of Additional Rent shall be adjusted, and an appropriate adjustment shall be made between the Landlord and the Tenant, if required.

3. TERM AND POSSESSION

(a) The Tenant shall have possession of the Premises for a period of thirty-five (35) years, commencing on the 1st day of September (the “**Commencement Date**”) and ending on the 31st day of August, 2056 (the “**Term**”). The Term may be extended as provided in Section 22 of this Lease (“**Renewal Period**”).

(b) Subject to the Landlord's rights under this Lease, and as long as the Lease is in good standing, the Landlord covenants that the Tenant shall have quiet enjoyment of the Premises during the Term of this Lease without any interruption or disturbance from the Landlord or any other person or persons lawfully claiming through the Landlord.

(c) The Landlord and Tenant agree that, notwithstanding that the improvements, including all buildings, structures, improvements, leasehold improvements, and other fixtures located now or in the future, at any time during the Term, in or on the Land, and any additions, alterations, or replacements thereto or thereof (the “**Improvements**”), aside from the Tenant’s trade fixtures, are fixtures and any rule of law that fixtures on land immediately vest in and are the absolute property of the freehold owner of that land, title to and ownership of the Improvements shall be deemed to vest in the Tenant until the expiration or earlier termination of this Lease, and upon the expiration or earlier termination of this Lease, title to and ownership of all the remaining Improvements shall automatically and immediately vest in the Landlord as in Section 3(d) of this Lease. The Tenant's title to and ownership of the Improvements until the expiration or earlier termination of this Lease shall at all times be subject to the provisions of this Lease, including, without limitation, the Landlord's rights in the remaining Improvements set out herein.

(d) At the expiration or earlier termination of this Lease:

- (i) Rent shall be adjusted between the Landlord and Tenant as of the expiration or earlier termination date, with all amounts for the period up to and including such adjustment date payable by the Tenant on or before the expiration or earlier termination date;
- (ii) Subject to section 6(f), the Tenant shall surrender the land and any and all remaining Improvements to the Landlord in the condition they were required by this Lease to be maintained in during the Term;
- (iii) the Tenant shall remove from the Premises, or cause to be removed, all chattels and all tenant's trade fixtures, including those of the Tenant, its subtenants and all others claiming by, through or under the Tenant, other than chattels and tenant's trade fixtures that are part of the structure or building systems of any remaining Improvements, and the Tenant, at its expense, shall repair any damage to the Premises caused by such removal;
- (iv) all rights and interests of the Tenant, its subtenants and all others claiming by, through, or under the Tenant (with the exception of the rights of the Landlord

arising under Section 11(b) of this Lease), shall immediately cease and terminate, and the Premises shall be vacant;

- (v) title to and ownership of any and all remaining Improvements shall automatically and immediately vest in, and such remaining Improvements shall belong to and be the absolute property of, the Landlord, without further act or conveyance, without compensation to the Tenant or to anyone else whomsoever, and free and clear from all and every lien, charge, mortgage, claim, security interest, purchase agreement, lease, and other encumbrance; and
- (vi) the Tenant shall deliver to the Landlord copies, or the originals if in the Tenant's possession, of the "as-built" plans and specifications for any and all remaining Improvements and all surveys, engineering reports, environmental reports, feasibility studies, and other similar written materials with respect to the Premises or the remaining Improvements in the Tenant's possession at the expiration or earlier termination of the Lease.

4. ASSIGNMENT

(a) The Tenant may assign, sublet, transfer or otherwise part with possession of this Lease, in whole or in part (“**Transfer**”), with the consent of the Landlord in writing, which consent will not be unreasonably withheld. For clarity’s sake, for the purposes of this section, Transfer does not include the internal and/or business restructuring or reorganization of the Tenant or, subject to section 4(d), any changes in ownership of the Tenant.

(b) The consent of the Landlord to any Transfer shall not operate as a waiver of the necessity for consent to any subsequent assignment or subletting.

(c) Any consent granted by the Landlord shall be conditional upon the assignee, sublessee, occupant executing a written agreement directly with the Landlord agreeing to be bound by all the terms of this Lease as if the assignee, sublessee, occupant or new controlling party had originally executed this Lease as tenant.

(d) Any consent given by the Landlord to any Transfer of the Tenant's interest in this Lease or in the Premises shall not relieve the Tenant from his obligations under this Lease, including the obligation to pay Rent as provided for herein.

(e) If the party originally entering into this Lease as Tenant, or any party who subsequently becomes the Tenant by way of Transfer or otherwise as provided for in this Lease, is a corporation then:

- (i) the Tenant shall not be entitled to deal with its authorized or issued capital or that of an affiliated company in any way that results in a change in the effective voting control of the Tenant unless the Landlord first consents in writing to the proposed change;
- (ii) if any change is made in the control of the Tenant corporation without the written consent of the Landlord then the Landlord shall be entitled to treat the Tenant as

being in default and to exercise the remedies stipulated in Section 11(b) of this Lease and any other remedies available in law; and

- (iii) the Tenant agrees to make available to the Landlord or his authorized representatives the corporate books and records of the Tenant for inspection at reasonable times, for the purposes of confirming compliance with the requirements of this section.

(f) The Tenant shall prepay to the Landlord all legal fees (on a full indemnity basis) and other expenses to be incurred by the Landlord in considering the Tenant's request for consent under this Section 3(d)(vi) and for documenting the proposed assignment, subletting or change of control. This cost will be paid concurrent with the Tenant's request for consent and at least thirty (30) days prior to the effective date of the consent.

5. USE

(a) During the Term of this Lease and any Renewal Period, the Premises shall not be used for any purpose other than to blend, supply and distribute high quality petroleum products, unless the express consent of the Landlord is given in writing.

(b) The Tenant shall not do or permit to be done at the Premises anything which may:

- (i) constitute a nuisance;
- (ii) cause damage to the Premises, including bringing, storing or creating thereon any substance or material that is or becomes prohibited, controlled or regulated under any applicable Environmental Laws (as hereinafter defined), 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 ("Hazardous Substances"), except in strict compliance with all applicable Environmental Laws, statutes, by-laws, ordinances, regulations, notices, orders or lawful requirements of the federal or provincial authorities, AAFN council, lands manager or other competent authority;
- (iii) cause injury or annoyance to occupants of neighbouring premises;
- (iv) make void or voidable any insurance upon the Premises; or
- (v) constitute a breach of any valid and applicable by-law, statute, order or regulation of any municipal, provincial or other competent authority relating to the Premises.

(c) The Tenant shall not commit or suffer waste to all or any part of the Premises, except that the demolition, development, maintenance and repair of Premises on the land in accordance with Section 6 shall be deemed not to be waste.

(d) The Tenant shall at all times conduct all activities on the Premises in accordance with all applicable environmental laws, including all applicable federal, provincial and local laws and by-laws including, without limitation, AAFN laws and by-laws, and regulations, ordinances and orders in force now or at any time thereafter, pertaining to the environmental protection of the Premises and the regulation of the environmental impacts and risks resulting from the carrying on of the Tenant's development and operation of a blending site for fuel distribution ("**Environmental Laws**").

(e) The Tenant shall notify the Landlord of contraventions of Environmental Laws, including but not limited to spills, discharges or other releases of Hazardous Substances onto the Premises, or from the Premises onto other properties, that is in contravention of Environmental Laws.

(f) During the Term and any Renewal Period, the Tenant shall provide the Landlord with copies of all tests, studies, notices, claims, demands, requests for information, or other communications with any competent governmental authority having jurisdiction relating to the presence or spill, discharge or other release of any Hazardous Substance at, on, under, over, emanating from, or migrating to or from the Premises. At the expiration of the Lease, the Tenant, at the Tenant's expense, shall provide the Landlord with a report of an environmental engineer, that is dated within ten (10) days of the expiration date or earlier termination date, as applicable, certifying that the Premises are in acceptable environmental condition. The cost of any remedial action taken to ensure that the Premises are in acceptable environmental condition shall be borne by the Tenant.

(i) In addition to the requirements set out above, the Tenant shall provide to the Landlord the following plans, inspections and compliance orders on the dates and/or frequency set forthwith:

- (A) A copy of the stamped construction drawings from Environment and Climate Change Canada and the Technical Standards and Safety Authority, delivered no later than within seven (7) days of receipt from the relevant authority;
- (B) A copy of the Emergency and Preparedness Response Plan, delivered no later than seven (7) days following its preparation as required under the TSSA;
- (C) On an annual basis, a copy of the annual TSSA Inspection Report, delivered no later than seven (7) days following its receipt from the TSSA;
- (D) A copy of any compliance order from TSSA which may arise as a result of the annual TSSA Inspection Reports, delivered no later than within seven (7) days of issuance;
- (E) A copy of the inspection report from Waste Reduction and Management Division – Environment and Climate Change Canada, Enforcement Branch, delivered no less than once every two years;
- (F) A copy of the final as-built drawings upon completion.

(g) The Tenant shall promptly notify the Landlord in writing of any notice by any competent authority having jurisdiction alleging a possible violation of, or with respect to any matter involving, any Environmental Laws relating to the operations in the Premises.

6. CONSTRUCTION, REPAIR AND MAINTENANCE

(a) The Tenant shall not construct any new buildings, structures or other improvements on, under, or above the lands except in compliance with all applicable laws, building code standards and AAFN by-laws, including but not limited to *Canadian Environmental Protection Act, 1999*, S.C. 1999, c. 33, the Canadian Electrical Code, the National Plumbing Code of Canada, and the National Building Code or Ontario's *Building Code Act, 1992*, S.O. 1992, c.23, whichever is more stringent, and with the written consent and approval of the Landlord. For clarity, those buildings, structures, and improvements identified on the site plan attached hereto as Schedule E do not require the written consent and approval of the Landlord and are deemed by virtue of this Lease to be approved by the Landlord.

(b) The Tenant covenants that during the term of this Lease and any renewal thereof the Tenant shall keep in good condition the Premises including all alterations and additions made thereto, and shall, with or without notice, promptly make all needed repairs and all necessary replacements as would a prudent owner in accordance with all applicable laws, regulations and leasing requirements.

(c) During the Term and any Renewal Period, the Tenant, at the Tenant's expense, shall operate, maintain, repair, and replace all and every component of the Premises. At all times during the Term, the Tenant, at the Tenant's expense, shall keep the land and Improvements in good order and condition, reasonable wear and tear excepted, as would a prudent owner of comparable premises and in conformity with no less than the minimum requirements of all applicable laws and insurers of all or any part of the leased Premises. Such standard shall include, without limitation: (a) keeping the environmental condition of the land to the standard set out by the then current minimum standards in Environmental Laws at the time; (b) keeping the Improvements to the standard in this Section regardless of the reason that repair or replacement is being done; and (c) keeping the Premises clean and clear of snow, ice, and debris. The Landlord is not required at any time to prepare, construct, maintain, repair, replace, clean, alter, or improve the Leased Premises, or any part of them. Nothing in this Section 6(c) shall prevent the Tenant from demolishing Improvements or replacing Improvements with new Improvements instead of repairing them.

(d) The Tenant shall permit the Landlord, or a person authorized by the Landlord, to enter the Premises upon three business days' notice, or as otherwise agreed between the Parties, to view and inspect the conditions and the state of repair of the Premises and Improvements, when the Landlord has reasonable grounds for believing that the condition or state of repair of the Premises or Improvements is not in compliance with the Tenant's obligations under this Lease Agreement, or in the case of an emergency:

- (i) If upon such examination, repairs are found to be necessary under the terms of this Lease, written notice of the repairs required shall be given to the Tenant by or on behalf of the Landlord and the Tenant shall make the necessary repairs within thirty (30) days, if the repairs are reasonably able to be completed within that timeframe,

or if the repairs are not reasonably capable of being completed within thirty (30) days, the Tenant shall commence the necessary repairs within thirty (30) days and thereafter diligently pursue their completion;

- (ii) and if the Tenant refuses or neglects to complete the repairs in accordance with the requirements of section 6(d)(i), the Landlord may, but shall not be obliged to, make any necessary repairs, and shall be permitted to enter the Premises, by himself or his servants or agents, for the purpose of effecting the repairs without being liable to the Tenant for any loss, damage or inconvenience to the Tenant in connection with the Landlord's entry and repairs, and if the Landlord makes repairs the Tenant shall pay the reasonable cost of them immediately as Additional Rent.

(e) If at any time during the Term or any renewal thereof 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, unless the Tenant within that timeframe commences, and thereafter diligently pursues, lawful process to challenge the validity of such lien. 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, or fails to challenge the validity of such lien through lawful process, 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 Additional 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.

(f) Upon the expiry of the Term and any Renewal Period or other termination of this Lease, the Landlord shall consult with the Tenant when determining that the Tenant shall do one of the following: (i) the Tenant shall peaceably surrender the Premises, including any alterations or additions made thereto, to the Landlord in a state of good repair, reasonable wear and tear and damage by fire, lightning and storm only excepted; or (ii) the Tenant shall demolish all structures forming the Premises and shall ensure that the land is graded or levelled with adequate drainage and does not contain partially demolished structures or demolition debris. Without limiting the generality of the foregoing, prior to the expiration of the Term or of any renewal period, the Tenant shall remediate, including but not limited to treating, excavating, removing or disposing of any part or parts of the Premises in order to remove Hazardous Substances therefrom in accordance with the Environmental Laws, 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.

- (g) The Tenant further agrees to provide the Landlord with a site closure bond or other security to the Landlord in order to guarantee that the Tenant will comply with its obligations under this Lease to comply with the Environmental Laws with respect to any remediation required (the “**Site Closure Bond**”).
- (i) The Site Closure Bond shall be in the amount of \$1,500,000.00 dollars and will be renewed every five (5) years. Upon renewal, the Site Closure Bond shall be increased by a percentage equal to the percentage increase in the Consumer Price Index – all Items, for the immediately preceding 5 years. For clarity, if the Tenant’s cost to comply with its obligations under this Lease to comply with the Environmental Laws with respect to any remediation exceeds the amount of the Site Closure Bond, the Tenant shall be liable to pay the difference.
 - (ii) The Site Closure Bond shall remain in full force and effect for a period after the termination of this Lease until a letter has been received from the Landlord stating that the Tenant has complied with the provision of this Lease relating to compliance with the Environmental Laws, which shall not be unreasonably withheld. The Landlord shall move expeditiously to provide said letter.
- (h) The Tenant shall immediately give written notice to the Landlord of any substantial damage that occurs to the Premises from any cause.

7. ALTERATIONS AND ADDITIONS

- (a) If the Tenant, during the Term of this Lease or any renewal of it, desires to make any Improvements to the Premises, including but not limited to: erecting partitions, attaching equipment, and installing necessary furnishings or additional equipment of the Tenant’s business, the Tenant may do so at its own expense, at any time and from time to time, if the following conditions are met:
- (i) before undertaking any alteration or addition the Tenant shall submit to the Landlord a plan showing the proposed Improvements, and items included in the plan which are regarded by the Tenant as “**Trade Fixtures**” shall be designated as such on the plan, and the Tenant shall not proceed to make any such Improvements unless the Landlord has approved the plan, and the Landlord shall not unreasonably or arbitrarily withhold his approval. For clarity, any repairs, maintenance and improvements that are consistent with the site plan attached hereto as Schedule E do not require the written consent and approval of the Landlord and are deemed by virtue of this Lease to be approved by the Landlord;
 - (ii) any and all Improvements to the Premises made by the Tenant must comply with all valid and applicable building code standards and by-laws of AAFN.
- (b) The Tenant shall be responsible for and pay the cost of any Improvements that any competent governmental authority having jurisdiction, municipal, provincial or otherwise, may lawfully require to be made in, on or to the Premises.

(c) Other than as provided in Section 3(d)(iii) above, the Tenant shall not, during the Term of this Lease remove from the Premises any Trade Fixtures or other goods and chattels of the Tenant except in the following circumstances:

- (i) the removal is in the ordinary course of business;
- (ii) the Trade Fixture has become unnecessary for the Tenant's business or is being replaced by a new or similar Trade Fixture; or
- (iii) the Landlord has consented in writing to the removal;

but, in any case, the Tenant shall make good any damage caused to the Premises by the installation or removal of any Trade Fixtures, equipment, partitions, furnishings and any other objects whatsoever brought onto the Premises by the Tenant.

(d) Pursuant to section 6(f), the Tenant shall, at their own expense, if requested by the Landlord, remove any or all additions or improvements made by the Tenant to the Premises during the Term and shall repair all damage caused by the installation or the removal or both.

(e) The Tenant shall not bring onto the Business Park Road any machinery, equipment or any other thing that might in the opinion of the Landlord, acting reasonably, by reason of its weight, size or use, damage the Business Park Road, and if the Business Park Road is damaged or overloaded (reasonable wear and tear excepted) the Tenant shall restore the road immediately or pay to the Landlord the cost of restoring the road. The Landlord acknowledges that the Business Park Road is not paved.

8. INSURANCE

(a) It is the intent of the Parties that all risk of loss for the Premises be shifted to the Tenant's insurance, to the maximum extent practicable, and personally on to the Tenant to the extent not insured for by the Tenant's insurance, including, without limitation, for the Landlord's negligence. Accordingly, during the Term, the Tenant shall maintain, or cause to be maintained, the insurance required in accordance with this Section 8 of this Lease. Insurance maintained by the Landlord, if any, whether or not paid for, in whole or in part, by the Tenant, shall not release the Tenant from any liability under this Lease nor shift any liability onto the Landlord.

(b) All insurance policies required to be maintained by the Tenant under Section 8 of this Lease shall:

- i) be written on an occurrence basis, except for errors and omissions insurance and environmental liability insurance issued on a claims-made or hybrid basis, or as otherwise consented to by the Landlord in writing prior to the issuance, amendment or renewal of such policy;
- ii) provide that such insurance is primary to and not contributory with any similar insurance carried by the Landlord, if any;
- iii) include the Landlord as an additional insured;

- iv) include an undertaking by the insurer in each policy not to cancel or make a material change to the policy without first giving the Landlord thirty (30) days' prior written notice of cancellation or material change;
 - v) not contain a co-insurance clause for property insurance policies; and
 - vi) be with insurers licensed to conduct business in the Province of Ontario where the Premises are located and which have a high insurance company credit rating within the insurance industry.
- b) During the Term or any Renewal Period, at all times during site preparation of the Premises and demolition, construction and major repairs, the Tenant, at its expense, shall maintain, or cause its general contractor to maintain, insurance protecting the Landlord, Tenant, Tenant's contractors and their subcontractors, from loss or damage that occurs during the course of construction on the land to buildings, equipment, tools, improvements and other property at the Premises, on an "all risks" basis including, without limitation, resulting damage from faulty workmanship and design error, in the amount of the full replacement cost thereof.
- c) During the Term or any Renewal Period, at all times during site preparation of the land and demolition, construction and major repairs, the Tenant, at its expense, shall maintain, and cause its contractors and their subcontractors to maintain, workers' compensation insurance as required by applicable laws in the Province of Ontario.
- d) At all times during the Term or any Renewal Period, the Tenant shall maintain, or cause its contractors to maintain, professional errors and omissions insurance covering all architects, engineers, specialists, and consultants hired for the design, development and construction, in an amount and with coverage as a prudent developer of a similar project, on a claims-made basis. Coverages shall be specific for this project and not aggregated with insurance for other undertakings of the insureds.
- e) At all times during the Term or any Renewal Period, the Tenant, at its expense, shall maintain property insurance covering loss or damage to the Premises, in an amount equal to the full replacement cost thereof, from "all risks" and additional perils including, without limitation, fire, flood, earthquake, sewer back-up, collapse and by-laws.
- f) At all times during the Term or any Renewal Period, the Tenant, at its expense, shall maintain insurance coverage for loss or damage to the Tenant's personal property, chattels and tenant's trade fixtures located in, on or at the Premises (including, without limitation, equipment, machinery, appliances, inventory, stock-in-trade and furniture), in an amount equal to at the full replacement cost thereof, from "all risks". The Tenant shall require each of its subtenants to maintain such insurance for the subtenant's personal property, chattels and tenant's trade fixtures located in, on or at the Premises.
- g) At all times during the Term or any Renewal Period (including during periods of site preparation, construction, demolition and major repairs if insurable objects exist during such periods), the Tenant, at its expense, shall maintain comprehensive broad form boiler and machinery insurance on all boilers, elevators, mechanical and electrical equipment servicing buildings and all other

pressure vessels, machinery, equipment and objects located on the Premises that are insurable under such type of policy, on a blanket repair or replacement basis.

- h) At all times during the Term or any Renewal Period (including, without limitation, during and after periods of site preparation, demolition, construction or major repairs on the Premises), the Tenant, at its expense, shall maintain commercial general liability insurance, on an occurrence basis, covering all claims and liability for bodily injury (including death) and property damage (including loss of use thereof), arising out of the ownership, development, construction, repair, demolition, occupancy, use, management or maintenance of, or the operations on, the Premises, in an amount not less than \$5,000,000.00 per occurrence. Such policy shall include cross-liability and severability of interest clauses in favour of the Landlord. Such policy shall include endorsements (or separate policies) for, without limitation, tenant's legal liability, contractual liability, non-owned automobile liability, owned automobile liability, personal injury, employment practices liability, and owners' and contractor's protective insurance. Without limiting the foregoing, the contractual liability endorsement shall cover the performance by the Tenant of the indemnities given by it in this Lease and all the Tenant's other insurable obligations under this Lease. However, the limit of this, or any other, insurance policy shall not limit the Tenant's liability under the indemnities given by it in this Lease or its liabilities under any other provisions of this Lease.
- i) At all times during the Term or any Renewal Period, the Tenant shall maintain environmental liability insurance, in an amount as would a prudent landowner carrying on such use, and in an amount not less than five million dollars (\$5,000,000.00) per occurrence including, without limitation, coverage for clean-up costs for spills, gradual pollution and migration of contamination, on a claims-made basis.
- j) The Tenant shall obtain and keep in force during the Term and any Renewal Period any other form of insurance as the Landlord reasonably requires from time to time, in form, in amount and for insurance risks against which a prudent owner would insure.
- k) Within thirty (30) days of the signing of this Lease, and during the Term or any Renewal Period, at least ten (10) days before the start of any period of construction, demolition or major repair of improvements, at each policy renewal date, and from time to time during the Term or any Renewal Period upon reasonable request from the Landlord, the Tenant shall deliver to the Landlord, in accordance with the notice provision in this Lease, insurance certificates or, if requested, certified copies of policies, evidencing that all insurance policies required to be carried by the Tenant in accordance with this Section 8 of this Lease are in place.
- l) If the Tenant fails to procure the insurance required to be procured by it under this Section 8 of this Lease, or fails to pay any premium of such insurance, the Landlord shall have the right, but not the obligation, to procure on behalf of the Tenant any such insurance, and to pay on behalf of the Tenant any such payment or payments as may be necessary. Any sum(s) so paid or expended by the Landlord on behalf of the Tenant shall be reimbursed and paid by the Tenant to the Landlord as Additional Rent. All insurance procured or premiums paid for by the Landlord under this section of this Lease shall not release the Tenant from any liability under this Lease and the Landlord shall not have assumed any liability under this Lease by procuring or paying for any such insurance.

- m) The Tenant hereby releases the Landlord from all liability, costs, losses and claims whatsoever respecting injury (including death, bodily injury and personal injury) sustained by the Tenant or any other persons or entities, and damage to the property (including loss thereof) of the Tenant (including, without limitation, the buildings, improvements and personal property) or the property of any other persons or entities, occurring at or on the Premises during the Term or any overholding period due to any cause whatsoever, including, without limitation, any injury or damage caused or contributed to by the negligence of the Landlord, except that the Landlord shall not be released by this section from all or any default by the Landlord under this Lease. This release is not limited by the insurance or amount of insurance maintained or required to be maintained by the Tenant.
- n) The Tenant hereby indemnifies and holds the Landlord harmless of and from any and all liability, costs (including, without limitation, legal costs), losses, damages, injuries, and claims whatsoever incurred, sustained or which may be incurred or sustained by it, whether made or brought by the Tenant or anyone else, arising from, related to or in connection with: (a) any and all negligent or intentional act or omission on the part of the Tenant; (b) any and all default by the Tenant under this Lease; (c) any and all release contrary to Environmental Laws by the Tenant, its subtenants or anyone else for whom the Tenant is responsible of Hazardous Substances onto the Premises and/or surrounding properties during the Term or any renewal thereof, or any overholding period, and activities to remediate such contamination; or (d) any and all injury (including death, bodily injury and personal injury) to any persons or entities and damage to the Premises or any other property (including loss thereof) of the Tenant or of any other persons or entities, occurring at or on the Premises during the Term or any renewal thereof, or any overholding period, due to any cause whatsoever, including, without limitation, such injury or damage caused or contributed to by the negligence of any or all of the Landlord, except for a default by the Landlord under this Lease. In case any action or proceeding is brought against the Landlord by reason of any claim mentioned in this section, the Tenant, upon notice from the Landlord, shall, at the Tenant's expense, resist or defend such action or proceeding in the Landlord's name, if necessary, by counsel for the insurance company, if such claim is covered by insurance, or otherwise by counsel approved by the Landlord. The Landlord agrees to give the Tenant prompt notice of any such claim or proceeding. This indemnification survives the expiration or earlier termination of this Lease, or the dissolution or, to the extent allowed by applicable laws, the bankruptcy or insolvency of the Tenant. This indemnification does not extend beyond the scope of this Lease and does not extend to claims exclusively between the Landlord and Tenant arising from the terms, or regarding the interpretation of, this Lease. This indemnity is not limited by the insurance or the amount of insurance required to be maintained by the Tenant under this Lease or that is maintained by the Tenant.
- o) The loss payable under any and all property insurance policies maintained by the Tenant insuring against damage to the Premises by any covered perils, shall be payable to either the Landlord or the Tenant. Such proceeds of insurance shall be applied (by the Tenant) to the cost of repairing, demolishing, rebuilding or replacing the damaged portions of the Premises, in accordance with this Lease.

9. DAMAGE TO THE PREMISES

- (a) If, during the Term or any Renewal Period, all or any part of the Premises shall be destroyed or damaged in whole or in part by fire or other casualty (including any casualty for which insurance

was not obtained or obtainable) of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, neither the Tenant nor the Landlord may terminate this Lease, the Tenant may not surrender possession of all or any part of the Leased Premises and there shall be no abatement of Rent nor reduction of other amounts payable by the Tenant under this Lease, notwithstanding any applicable laws to the contrary.

(b) If, during the Term or any Renewal Period, all or any part of the Premises shall be destroyed or damaged in whole or in part by fire or other casualty (including any casualty for which insurance was not obtained or obtainable) of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, the Tenant, at its expense, shall repair, rebuild, replace or demolish such damaged or destroyed improvements on the Premises, as soon as reasonably possible after the occurrence of the damage or destruction. The Tenant shall use the proceeds from the property insurance it maintains under this Lease to pay for such repair, demolition, rebuilding or replacement, and to the extent the insurance proceeds are not enough to cover all the costs and expenses thereof, the Tenant shall be responsible to pay for any shortfall. In no event shall the Landlord be obligated to repair, demolish, rebuild or replace all or any part of the Premises or pay any of the costs or expenses thereof. If the Tenant demolishes a damaged or destroyed improvement without the intention of rebuilding or replacing it or does not replace or rebuild it within a reasonable time after demolition, then the Tenant shall ensure that the land is graded or levelled with adequate drainage and does not contain partially demolished structures or demolition debris.

(c) There shall be no abatement from or reduction of the Rent payable by the Tenant, nor shall the Tenant be entitled to claim against the Landlord for any damages, general or special, caused by fire, water, sprinkler systems, partial or temporary failure or stoppage of services which the Landlord is obliged to provide according to this Lease, from any cause whatsoever.

10. HAZARDOUS SUBSTANCES

(a) Should a release, as defined in the Environmental Laws and including, 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 (“**Release**”) of any Hazardous Substance occur at the Premises as a result of the acts or omissions of Tenant, or its employees, agents, suppliers, customers, contractors, or invitees, Tenant shall immediately comply with all legally required or reasonably recommended remedial actions and shall contain, remove from the Premises, and/or properly dispose of such Hazardous Substance and any material contaminated by such Release, and remedy and mitigate all threats to human health or the environment relating to such Release, all in accordance with Environmental Laws, including, without limitation, complying with all requirements and guidelines of professional bodies, associations or other organizations governing Tenant’s use or business conducted in the Premises.

(b) Tenant shall, at Tenant’s expense, promptly make all submissions to, provide all information required by, and comply with all requirements of, all competent authorities under the applicable laws.

(c) Should any competent authorities or any third party having jurisdiction pursuant to an applicable law demand that a clean-up plan be prepared and a clean-up undertaken because of any Release or existence of any Hazardous Substance that occurs or becomes known during the Term or any renewal thereof or before the commencement of the Term during any time the Tenant is in possession of the Premises, at or from the Premises, or which arises at any time from Tenant's use or occupancy of the Premises, then Tenant shall, at Tenant's expense, promptly prepare and submit the required plans and all related bonds and other financial assurances and Tenant shall, at its expense, promptly carry out all such clean-up plans.

(d) Tenant hereby agrees to indemnify, defend, save, and keep Landlord, and Landlord's officers, directors, principals, shareholders, partners, employees, successors, and assigns, harmless from and against any and all liabilities, obligations, charges, losses, damages, penalties, claims, actions, and expenses, including without limitation, engineers' and professional fees, soil tests, and chemical analysis, Phase I and Phase II ESAs, remediation costs, court costs, legal fees, and expenses through all trial, appellate, and administrative levels, imposed on, incurred by, or asserted against Landlord, in any way relating to, arising out of, or in connection with any Release of Hazardous Substances by Tenant in, on, about, from, under or above the Premises. The foregoing indemnification shall survive any assignment or termination of this Lease.

11. ACTS OF DEFAULT AND LANDLORD'S REMEDIES

- (a) An "Act of Default" has occurred when:
- (i) the Tenant has failed to pay Rent for a period of fifteen (15) consecutive days following receipt of a written notice of default from the Landlord;
 - (ii) the Tenant has,
 - (A) breached its covenants or failed to perform any of its obligations under this Lease;
 - (B) the Landlord has delivered a written notice of default; and
 - (C) if the default or failure to perform is reasonably capable of being cured within thirty (30) days, the Tenant has failed to cure the default or perform the obligation within thirty (30) days, or
 - (D) if the default or failure to perform is not reasonably capable of being cured within thirty (30) days, the Tenant has failed to commence to cure the default or perform the obligation promptly upon receipt of the written notice and thereafter pursue same with all due diligence to completion;
 - (iii) the Tenant has
 - (A) become bankrupt or insolvent or made an assignment for the benefit of Creditors;
 - (B) had its property seized or attached in satisfaction of a judgment;

- (C) had a receiver appointed;
 - (D) committed any act or neglected to do anything with the result that a Construction Lien or other encumbrance is validly registered against the Landlord's property, and Tenant has not complied with its obligation under section 6(e) to discharge such lien; or
 - (E) taken action if the Tenant is a corporation, with a view to winding up, dissolution or liquidation; or
- (iv) the Premises;
- (A) become vacant or remain unoccupied for a period of thirty (30) consecutive days; or
 - (B) are not open for business on more than thirty (30) business days in any twelve-month period or on any twelve (12) consecutive business days;
 - (C) are used by any other person or persons, or for any other purpose, than as provided for in this Lease, without the written consent of the Landlord.
- (b) When an Act of Default on the part of the Tenant has occurred:
- (i) the current month's rent together with the next three months' rent shall become due and payable immediately; and
 - (ii) the Landlord shall have the right to terminate this Lease and to re-enter the Premises and deal with them as he may choose.
- (c) If, because an Act of Default has occurred, the Landlord exercises its right to terminate this Lease and re-enter the Premises prior to the end of the Term or any Renewal Period, the Tenant shall nevertheless be liable for payment of Rent and all other amounts payable by the Tenant in accordance with the provisions of this Lease until the Landlord, using prompt and reasonable efforts, has re-let the Premises or otherwise dealt with the Premises in such a manner that the cessation of payments by the Tenant will not result in loss to the Landlord, and the Tenant agrees to be liable to the Landlord, until the end of the Term of this Lease for payment of any difference between the amount of Rent hereby agreed to be paid for the Term hereby granted and the Rent any new tenant pays to the Landlord.
- (d) The Tenant covenants that during the Term or any Renewal Period, the personal property of the Tenant upon the Premises shall not be exempt from levy by distress for Rent in arrears:
- (i) and the Tenant acknowledges that it is upon the express understanding that there should be no such exemption that this Lease is entered into, and by executing this Lease:
 - (A) the Tenant waives the benefit of any such legislative provisions which might otherwise be available to the Tenant in the absence of this agreement; and

(B) the Tenant agrees that the Landlord may plead this covenant as an estoppel against the Tenant if an action is brought to test the Landlord's right to levy distress against the Tenant's property upon the Premises.

(e) If, when an Act of Default has occurred, the Landlord chooses not to terminate the Lease and re-enter the Premises, the Landlord shall have the right to take any and all necessary steps to rectify any or all Acts of Default of the Tenant and to charge the costs of such rectification to the Tenant and to recover the costs as Rent.

(f) If, when an Act of Default has occurred, the Landlord chooses to waive its right to exercise the remedies available to them under this Lease or at law the waiver shall not constitute condonation of the Act of Default, nor shall the waiver be pleaded as an estoppel against the Landlord to prevent them exercising their remedies with respect to a subsequent Act of Default. No covenant, term, or condition of this Lease shall be deemed to have been waived by the Landlord unless the waiver is in writing and signed by the Landlord.

12. **LANDLORD'S RIGHT TO SHOW AND OVERHOLDING**

(a) The Tenant agrees to permit the Landlord during the last three months of the Term or any Renewal Period to display "For Rent" or "For Sale" signs or both at the Premises and, upon three (3) business days' notice, unless otherwise agreed to by the Tenant, to show the Premises to prospective new tenants and to permit anyone having written authority of the Landlord to view the Premises at reasonable hours.

(b) If the Tenant remains in possession of the Premises after termination of this Lease as aforesaid and if the Landlord then accepts rent for the Premises from the Tenant, it is agreed that such overholding by the Tenant and acceptance of Rent by the Landlord shall create a monthly tenancy only but the tenancy shall remain subject to all the terms and conditions of this Lease except those regarding the Term and except for Basic Rent which shall be deemed to be double times the Basic Rent otherwise payable under this Lease.

13. **ESTOPPEL CERTIFICATE FROM THE TENANT**

The Tenant agrees that it will, at any time or times during the Term, upon being given at least fifteen (15) days prior written notice, execute and deliver to the Landlord a statement in writing certifying:

(a) that this Lease is unmodified and is in full force and effect (or, if modified, stating the modifications and confirming that the Lease is in full force and effect as modified);

(b) the amount of Rent being paid;

(c) the dates to which Rent has been paid;

(d) other charges payable under this Lease which have been paid;

(e) particulars of any prepayment of Rent or security deposits; and

- (f) particulars of any subtenancies.

14. **EMPLOYMENT OPPORTUNITIES**

- (a) Both parties are committed to employing as many AAFN members as reasonably possible at all levels of the workforce, from labour to management.
- (b) During the Term or any renewal thereof, where possible, Tenant shall maximize training and employment opportunities for members of AAFN in the fuel blending facility, will employ qualified AAFN members at the fuel blending facility, and will provide training to AAFN members interested in the securing job at the OTE fuel blending facility.
- (c) Tenant will provide priority hiring to AAFN members, whereby if two or more equally qualified persons have equal years of experience, Tenant will employ the AAFN member. Where the difference between the experience of an AAFN member or another prospective candidate can be eliminated by a reasonable period of on-the-job training, Tenant will employ the AAFN member rather than the other candidate with more experience.
- (d) Tenant shall maximize procurement opportunities to AAFN businesses, whereby if two or more qualified businesses have equal expertise and experience and offer the same price for the procured services Tenant will give priority to AAFN member businesses first, and second priority to AAFN-owned businesses.

15. **MANDATORY MEDIATION AND ARBITRATION**

- (a) If a dispute arises out of, or in connection with, this Lease and the parties do not resolve some or all of the dispute through negotiation, then the parties shall attempt to resolve the dispute through mediation. The parties shall appoint a mutually-agreeable mediator to attempt to resolve the dispute and shall attend at mediation. At the conclusion of the mediation, at the request of one or both parties, the mediator shall prepare a mediator's report which shall include as an appendix any agreement reached between the parties.
- (b) If the parties do not resolve all of the issues in dispute through mediation, then within 15 days from the date of the mediator's report and/or the conclusion of any settlement agreement, the parties shall submit any outstanding issues to binding 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.

(c) 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 conclusion of the arbitration. 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.

(d) Nothing herein shall preclude any party from seeking injunctive relief in the event that the party perceives that without such injunctive relief, serious harm may be done to the party.

16. **SUBORDINATION AND POSTPONEMENT**

(a) This Lease and all the rights of the Tenant under this Lease are subject and subordinate to any and all charges against the land, buildings or improvements of which the Premises form part, whether the charge is in the nature of a mortgage, trust deed, lien or any other form of charge arising from the financing or re-financing, including extensions or renewals, of the Landlord's interest in the property.

(b) The Landlord warrants and covenants that, as of the date of signing of this Lease Agreement, the Premises are not encumbered by or the subject matter of any interest or license described in Section 31.1 of the Land Code.

(c) In the event that such encumbrances are assumed at any time throughout the Term or any Renewal Period, the Landlord will provide notice to the Tenant of within fifteen (15) days of said encumbrance.

(d) Upon the request of the Landlord, the Tenant will execute any form required to subordinate this Lease and the Tenant's rights to any such charge, and will, if required, attorn to the holder of the charge.

(e) The Landlord shall not enter into any encumbrance or subordination that has the effect of permitting the holder of any charge to disturb the occupation and possession of the Premises by the Tenant. No subordination by the Tenant shall have the effect of permitting the holder of any charge to disturb the occupation and possession of the Premises by the Tenant as long as the Tenant performs its obligations under this Lease.

17. **RULES AND REGULATIONS**

The Tenant agrees on behalf of himself and all persons entering the Premises with the Tenant's authority or permission to abide by the rules and regulations set out in Schedule A and such reasonable rules and regulations that the Landlord may make from time to time hereafter.

18. **NOTICE**

- (a) Any notice required or permitted to be given by one party to the other pursuant to the terms of this Lease may be given

To the Landlord at:

Chi-Zhiingwaak Business Park Inc.
25 Reserve Road
Naughton, ON
P0M 2M0
Attn.: Director, Chi-Zhiingwaak Business Park Inc.

To the Tenant at the Premises or at:

Original Trader Energy LP
7331 Indian Line Road
Wilsonville, ON N0E 1Z0
Attn. : Glenn Page, President
glenn.page@originaltradersenergy.com

- (b) The above addresses may be changed at any time by giving ten (10) days' written notice.
- (c) Any notice given by one party to the other in accordance with the provisions of this Lease shall be deemed conclusively to have been received on the date delivered if the notice is served personally or seventy-two (72) hours after mailing if the notice is mailed.

19. **WARRANTIES**

- (a) The Landlord warrants and covenants to register lots 13, 14, and 15 of the Chi-Zhiingwaak Business Park, as shown on CLSR 109612, in the Atikameksheng Anishnawbek Land Register and in the First Nations Land Register, created pursuant to the First Nation Land Management Act ("FNLMA"), if such registration has not been undertaken at the time of the signing of this Lease Agreement.
- (b) The Landlord warrants and covenants that the Head Land Lease Agreement included at Schedule B has been validly enacted pursuant to the Atikameksheng Anishnawbek "Whitefish Lake First Nation" Land Code, dated September 17, 2008 (the "Land Code") and that the Head Land Lease will be registered without delay in the Atikameksheng Anishnawbek Lands Register and in the First Nation Land Register, if such registration has not been undertaken at the time of the signing of this Lease Agreement.
- (c) The Landlord represents, warrants and covenants to take all steps to request that the Atikameksheng Anishnawbek Band Council pass all Band Council Resolutions and take all steps required under the Land Code and the FNLMA, and any other applicable laws, necessary in order to permit the grant of this Lease Agreement as a lawful and binding contract on the parties, and any appeal periods in respect of such resolutions have expired without an appeal having been commenced, or if appeals haven been commenced such appeals have been withdrawn, dismissed

or otherwise finally determined; and that a certificated copy of the aforementioned Band Council Resolution is attached to this Lease Agreement as **Schedule F**;

(d) The Landlord represents, warrants and covenants, and acknowledges that the Tenant is relying thereon, that the Band Council Resolution attached as Schedule F is full and sufficient consent by Atikameksheng Anishnawbek First Nation, through the Band Council, for any present or future:

- (i) Assignments, transfers or any other dispositions of this Lease;
- (ii) Subleasing of the Premises or any portion thereof;
- (iii) Subleasing of any Improvements constructed or to be constructed on the Premises or any portion thereof.

(e) The Landlord shall forthwith cause the Tenant's interest in this Lease to be registered in the Atikameksheng Anishnawbek Lands Register, pursuant to s. 29.1 of the Land Code, and in the First Nation Land Register, while ensuring that such registration occurs without public disclosure of the aspects of this Lease that are subject to confidentiality as described in Section 23 of this Lease.

(f) The Landlord shall indemnify and save harmless the Tenant from and against any and all claims, losses, damages, suits, judgments, causes of action, legal proceedings, executions, demands, penalties or other sanctions and any and all costs arising in connection therewith suffered by the Tenant as a result of the representations and warranties included in Section 19 and throughout this Lease Agreement not being true and correct, or a result of a breach of the Landlord's covenants herein. The Landlord acknowledges and agrees that this Section 19 and the other warranties included throughout this Lease Agreement are fundamental provisions of this Lease and any breach thereof by the Landlord shall constitute a fundamental breach of this Lease causing irreparable harm to the Tenant and the Tenant may obtain injunctive relief, together with the use of any other rights and remedies available to the Tenant in law and in equity to protect its rights under and interest in this Lease.

(g) The representations and warranties contained in Section 19 and throughout this Lease Agreement shall not merge with but will survive the execution and delivery of this Lease, for the Term and any Renewal Periods.

20. INTERPRETATION

(a) The words importing the singular number only shall include the plural, and vice versa, and words importing persons shall include firms and corporations and vice versa.

(b) Unless the context otherwise requires, the word "Landlord" and the word "Tenant" wherever used herein shall be construed to include the executors, administrators, successors and assigns of the Landlord and Tenant, respectively.

(c) When there are two or more Tenants bound by the same covenants herein contained, their obligations shall be joint and several.

21. SEVERABILITY

(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.

22. OPTION TO EXTEND

(a) Provided that the Tenant, or a permitted transferee, is in occupation of the whole of the Premises, and is not then in material default and has not been in continuing or persistent material default, then, on delivery of written notice exercising this right given to the Landlord not more than nine (9) months and not less than six (6) months before the expiration of the Term, or the Renewal Period, as the case may be, the Tenant shall have the right to extended the Term of this Lease for further periods of twenty (20) years on the same terms and conditions as this Agreement, except as may be mutually agreed between the Parties ("Renewal Period"). The rent increase provisions set out at Section 2(b) and the Royalty calculation provisions set out in Schedule D shall apply to the Renewal Period, *mutatis mutandis*. There shall be no further right to extend the Term after the Renewal Period.

23. CONFIDENTIALITY

(a) The Parties agree that the amounts of the Basic Rent, the Additional Rent, the Royalty, Schedule D, Schedule E, the reports described in Sections 2(d)(i)(D) and 5(f)(i)(A), and any design information or drawings provided by the Tenant to the Landlord pursuant to the terms of this Lease are regarded as confidential information. Each party shall maintain the confidentiality of all such confidential information and, unless the written consent of the other Party is first obtained, it shall not disclose any confidential information to any third parties, except to the extent such disclosure is: (a) required pursuant to any applicable law or regulation, or an order of a court of competent jurisdiction; or (b) is required to be disclosed by any Party to its legal counsels and financial advisors, provided that any such legal counsels or financial advisors maintain the confidentiality of the information. This section shall survive the termination of this Lease for any reason.

(b) The Parties agree that if public disclosure of this Lease is required for any reason, including for the purposes of registration of this Lease pursuant to Section 19, the version disclosed shall be consistent with the redacted Lease included at Schedule G.

[SIGNATURE PAGE FOLLOWS]

In Witness of the foregoing covenants the Landlord and the Tenant have executed this Lease.

CHI-ZHINGWAAK BUSINESS PARK INC.

Per: 

Name: *Craig Nootchari*

Title: *General Manager*

ORIGINAL TRADERS ENERGY LP

Per: _____

Name:

Title:

August 24, 2021

SCHEDULE A: RULES AND REGULATIONS FORMING PART OF THIS LEASE

The Tenant shall observe the following Rules and Regulations (as amended, modified or supplemented from time to time by the Landlord as provided in this Lease):

1. The sidewalks, entrances, elevators, stairways and corridors of the building shall not be obstructed or used by the Tenant, its agents, servants, contractors, invitees or employees for any purpose other than access to and from the Premises.
2. The floors, skylights and windows that reflect or admit light into passageways or into any place in the building shall not be covered or obstructed by the Tenant, and no awnings shall be put over any window.
3. The toilets, sinks, drains, washrooms and other water apparatus shall not be used for any purpose other than those for which they were constructed, and no sweepings, rubbish, rags, ashes or other substances, such as chemicals, solvents, noxious liquids or pollutants shall be thrown therein, and any damage resulting to them from misuse shall be borne by the Tenant by whom or by whose employees, agents, servants, contractors or invitees the damage was caused.
4. No animals or birds shall be brought into the building or kept on the Premises.
5. No one shall use the Premises for sleeping apartments or residential purposes, for the storage of personal effects or articles other than those required for business purposes, or for any illegal purpose.
6. The Tenant shall not use or permit the use of any objectionable advertising medium, such as, without limitation, loudspeakers, public address systems, sound amplifiers, radio, broadcast or television apparatus within the building which is in any manner audible or visible outside of the Premises.
7. No inflammable oils or other inflammable, toxic, dangerous or explosive materials shall be kept or permitted to be kept in or on the Premises, save and except for those needed to blend, supply and distribute high quality petroleum products, which shall be properly maintained and stored pursuant to all applicable laws and regulations.
8. The moving of all heavy equipment and office equipment or furniture shall occur only between 6:00 p.m. and 8:00 a.m. or any other time consented to by the Landlord and the persons employed to move the same in and out of the building must be acceptable to the Landlord.
9. Canvassing, soliciting and peddling in the building is prohibited.
10. The Tenant shall first obtain in writing the consent of the Landlord to any alteration or modification to the electrical system in the Premises and all such alterations and modifications shall be completed at the Tenant's expense by an electrical contractor acceptable to the Landlord.
11. The Tenant shall first obtain in writing the consent of the Landlord to the placement by the Tenant of any garbage containers or receptacles outside the Premises or building.

12. The Landlord shall have the right to make such other and further reasonable rules and regulations and to alter, amend or cancel all rules and regulations as in its judgment may from time to time be needed for the safety, care and cleanliness of the building and for the preservation of good order therein and the same shall be kept and observed by the Tenant, his employees, agents, servants, contractors or invitees.



ATIKAMEKSHENG ANISHNAWBEEK CHI-ZHIINGWAAK HEAD LEASE



This Lease made in duplicate this 8th day of March 2021

BETWEEN:

Atikameksheng Anishnawbek
25 Reserve Road
Naughton, ON
P0M 2M0

(hereinafter the "Lessor")

AND

Chi-Zhiingwaak Business Park Inc.

(hereinafter called the Lessee)

1. RECITALS

- I. The Lands (as hereinafter defined) leased under this Lease (as hereinafter defined) are part of the First Nation (as hereinafter defined).
- II. The Lessor is in lawful possession of the Lands which are First Nation Land (as hereinafter defined).
- III. The Lessor is authorized to grant this Lease pursuant to section 33.1 of the Atikameksheng Anishnawbek Land Management Code.
- IV. The Lessee is a corporation incorporated in the province of Ontario.

In consideration of the rents, covenants and agreements reserved and contained in this Lease, the Parties (as hereinafter defined) covenant and agree as follows:

2. DEFINITIONS

- a) "**Applicable Laws**" means all: (a) statutes, regulations, by-laws, official plans, codes, rules, agreements, licenses, permits, approvals, orders, notices, directions, and other laws of, with or issued by any authority, including First Nation Council; (b) recommendations and requirements of any insurer insuring any Party or Parties or part or all of the Lands; (c) the Permitted Encumbrances and all other registrations on title to the Land from and after the Commencement Date; and (e) awards, injunctions, orders and decisions of any court, administrative tribunal or arbitration panel with jurisdiction, that are applicable, from time to time and at any time during the Term, to all or any of or any part of the Parties, this Lease, the Land, and or the Improvements located on the Land from time to time.
- b) "**Commencement Date**" means the 8th day of March 2021.
- c) "**Environment**" means the air, land, water and all other external conditions or influences under which humans, animals and plants live or are developed.
- d) "**Environmental Law**" means all by-laws, other legislation, regulations, and applicable orders, decisions, or the like, rendered by any governmental authority having jurisdiction over all or part of the Land, relating to any Hazardous Substances.

- e) **"First Nation"** means the Atikameksheng Anishnawbek or any successor to the First Nation pursuant to a federal statute.
- f) **"First Nation Council"** means the governing body of the First Nation, elected in accordance with Applicable Laws.
- g) **"First Nation Land"** means a reserve of the First Nation, or any portion thereof, that is subject to the Land Management Code.
- h) **"Government Authority"** means any federal, provincial, regional, municipal or local government or governmental authority (including the First Nation in its capacity as governmental authority, and including the Lands Manager of the First Nation), office or official having jurisdiction, or any political subdivision of any of them, or any entity, authority, agency or court or Person exercising executive, legislative, judicial, regulatory or administrative functions on behalf of such government, governmental authority, office or official or other political subdivision thereof.
- i) **"Hazardous Substances"** means those substances that are generally considered hazardous to human health and includes any pollutants, liquid wastes, hauled liquid wastes, toxic wastes, dangerous or hazardous wastes, materials, substances, or contaminants, including but not limited to explosives, inflammable oils and materials and substances likely to injure, damage, or endanger land, water, property, animal, plant or human health or safety when discharged into the Environment.
- j) **"Improvements"** means all buildings, structures, works, facilities, services, landscaping and other improvements by whomsoever made and which are at any time and from time to time situate on, under or above the Lands, including all equipment, machinery, apparatus and fixtures (other than trade fixtures) forming part of or attached to the improvements and all alterations, removal, additions to, replacements and substitutions thereto or thereof.
- k) **"Land Management Code"** means the First Nation's Land Code dated for reference September 2008, which sets out the principles, rules and administration structures pursuant to which the First Nation exercises authority and jurisdiction over the First Nation Land.
- l) **"Lands"** means Lot 2001, CLSR Plan 85675, further described in Schedule "A".
- m) **"Lands Manager"** means the First Nation employee responsible for the administration of the Land Management Code and First Nation Land.
- n) **"Lease"** means this Indenture of Lease together with all schedules thereto.
- o) **"Lessor"** means the persons first named above, and their heirs, executors, administrators, successors, and assigns.
- p) **"Minerals"** means ore of metal and every natural substance that can be mined and that:
 - (i) occurs in fragments or particles lying on or above or adjacent to the bedrock source from which it is derived, and commonly described as talus; or
 - (ii) is in the place or position in which it was originally formed or

deposited, as distinguished from loose, fragmentary or broken rock or float which by decomposition or erosion of rock, is found in wash, loose earth, gravel or sand, and includes coal, petroleum and all other hydrocarbons; regardless of gravity and howsoever and whosoever recovered, natural gas, building and construction stone, limestone, dolomite, marble, shale, clay, sand and gravel.

- q) **"Party"** means a party to this Lease and **"Parties"** means both of them.
- r) **"Permitted Encumbrances"** means the encumbrances set out in Schedule B.
- s) **"Permitted Use"** means use of the Land for any lawful commercial purpose or lawful commercial purposes, including but not limited to retail purpose, in accordance with all Applicable Laws;
- t) **"Person"** includes any individual, partnership, association or corporation.
- u) **"Premises"** means the Lands and all Improvements which are at any time and from time to time situate on, under or above the Lands.
- v) **"Prime Rate"** means, for any particular calendar month the per annum interest rate that is charged by Canadian chartered banks to their most creditworthy commercial borrowers in effect upon the last Wednesday of the month as the rate is ascertained and published for the month in the Bank of Canada Review, or if more than one such rate is published for the last Wednesday of the month, the average of all such rates or if another day or other days are substituted for the last Wednesday of the month in the Bank of Canada Review, the rate or the average of all rates published for the day or days substituted for the last Wednesday of the month.
- w) **"Project"** means the development, construction, operation, management, maintenance, repair, alteration and replacement of a major commercial and retail project to be constructed on the Lands by the Lessee during one or more phases.
- x) **"Registry"** means Atikameksheng Anishnawbek Lands Registry of the Self Government First Nations Lands Registry established by Canada and held in the National Capital Region which is maintained by the First Nation pursuant to section 30.1 of the Land Management Code.
- y) **"Remedial Plan"** means a plan prepared by the Lessee at the sole expense of the Lessee and designed to remove, eliminate, limit, correct, counteract, or mitigate the negative effects of a Hazardous Substance which has been discharged upon the Premises or any part thereof in such fashion that the land, water, property, animal or plant life, or human health and safety are or are likely to be injured, damaged or endangered.
- z) **"Rent"** means the rent described in Section 7 hereof.
- aa) **"Reserve"** means Atikameksheng Anishnawbek (Formerly Whitefish Lake No. 6).
- bb) **"Term"** means the period commencing on the Commencement Date and expiring on the last day of the month in which occurs the twenty-fifth (25th) anniversary of the Commencement Date, as such period may be extended,

renewed, or terminated earlier in accordance with the provisions of this Lease.

3. GRANT OF LEASE

- 3.1 The Lessor hereby leases to the Lessee the Lands situated in Reserve #224 - Atikameksheng Anishnawbek in the Province of Ontario, and more particularly known and described as:

Lot 2001, C.L.S.R. 85675,

Excepting and reserving all mines and minerals solid, liquid or gaseous which may be found to exist within, upon or under the Lands.

The Lessee acknowledges that this lease is subject to the Lessor's Land Management Code, which came into force September 2008, and to the Lessor's Applicable Laws, as enacted from time to time.

4. DEMISE

- 4.1 Subject to the terms and conditions of this Lease, the Lessor demises and leases to the Lessee, and the Lessee leases from the Lessor, the Lands for the Term.
- 4.2 The Lessee acknowledges that this Lease is subject to the Land Management Code and the First Nation's land use laws as enacted from time to time, and any policies arising therefrom.
- 4.3 During the term of this Lease and any renewals thereof, the Lessor hereby grants to the Lessee, and its assignees, licensees, sub-tenants, employees, servants, agents and invitees the non-exclusive license and right to enter onto, travel across and exit from the First Nation Land of which the Premises form a part so as to permit uninterrupted and unobstructed access to and from the Premises during the Term.

5. MINERALS

- 5.1 The granting of this Lease does not grant any interest in the Minerals or natural resources under the Lands.

6. USE OF LANDS

- 6.1 The Lessee may use the Lands for the Permitted Use.
- 6.2 The Lessor acknowledges and agrees that the Permitted Use is deemed to be a lawful purpose for the Lands in accordance with Applicable Laws.
- 6.3 If at any time during the Term the Lessee's use of the Lands, or Improvements thereon lawfully constructed and/or operated in accordance with Applicable Laws, cease to be lawful uses by reason of adoption or change of Applicable Laws, such use may be continued by the Lessee or its successors or assigns as a lawful non-conforming use on the Lands during the Term.
- 6.4 Provided that the Lessee complies with all Applicable Laws and is not in default of its obligations under this Lease, the Lessor shall work cooperatively with the Lessee in its dealings with all Government Authorities and will grant such authorizations as may be reasonably required by the Lessee in connection with the Project in accordance with this Lease or the carrying out of any other permitted use undertaken by the Lessee on the Lands in accordance with this Lease. The Lessee will pay the Lessor's reasonable administrative charges and reasonable direct out-of-pocket costs and expenses (including any reasonable legal or other consulting fees) incurred in respect of the foregoing, in advance, if required by the Lessor.

6.5 The Lessor will:

- a) Execute and deliver promptly on request of the Lessee from time to time, one or more plans of subdivision in respect of the Lands, as may be required, in accordance with Applicable Laws and subject to approval by any Government Authority, for the purposes of completing the Project.
- b) Authorize the granting of, or will execute and deliver, on request of the Lessee or a sublessee from time to time, any easement, right of way or similar charge over the Lands as may be required by the First Nation Council or any other Government Authority or any public utility or a sublessee of a ground sublease to enable the Lessee or a sublessee of the Lessee to develop, redevelop, construct, operate, alter or replace the Improvements in accordance with this Lease. Any such encumbrances will be prepared and granted at the sole cost of the Lessee and the Lessee will pay the Lessor's reasonable administrative charges and reasonable direct out-of-pocket costs and expenses (including any reasonable legal or other consulting fees) in connection therewith, in advance if required by the Lessor.

7. RENT

- 7.1 The Lessee has paid the Lessor, in consideration for the Lessor granting the leasehold estate created hereby in respect of the Lands for the Term, the aggregate amount of rent ("Rent") in the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby confirmed by the Lessor; the Lessor hereby confirms that no other Rent of any kind will be payable by the Lessee for the Lands during the Term.

8. TERM

- 8.1 The term of this lease shall be for a period commencing the 8th day of March 2021 and being fully completed and end on the 7th day of March 2046.

9. ASSIGNMENT

- 9.1 The Lessee shall have the right, subject to the applicable provisions of this Article 9, without the consent of the Lessor, to assign all of its interest in this Lease to any person (hereinafter called an "**Assignee**") whether by operation of law, sale, exchange or otherwise (except for mortgaging), enter into a transaction or series of transactions that results in a change of control of the Lessee, or if the Lessee is a corporation, reorganize, merge or amalgamate with another corporation, provided that: (a) the Lessor is provided with prior written notice of the transaction including the proposed effective date, name of the Assignee, transferee or resulting corporation and, if applicable, financial information evidencing compliance with Section 9.2; (b) the Assignee, or the Lessee after the change in control, reorganization, merger or amalgamation, as applicable, is an entity as creditworthy as the Lessee at the time of the change in control, assignment, reorganization, merger or amalgamation, as applicable with sufficient assets to satisfy the Lessee's obligations under this Lease; and (c) the Assignee, if any, enters into a written agreement with the Lessor, effective from and after the effective date of the assignment, change in control, amalgamation, reorganization or merger, as applicable, expressly agreeing to perform, observe and be bound by all of the Lessee's obligations under this Lease. Upon any assignment of this Lease, change of control, merger, reorganization or amalgamation of the Lessee, the Lessee shall not be released from its obligations, covenants and liabilities under this Lease and shall remain contractually bound to perform and observe the obligations of the Lessee under this Lease, except the assignor shall be released upon an assignment if the Assignee is an affiliate of the Lessee. If the Lessee's interest in this Lease is assigned or transferred in violation of the provisions of this Article 9, such assignment or transfer shall be void and of no force and effect against the Lessor, and the Lessee shall be in default under this Section 9.1 of this Lease.

- 9.2 The Lessee cannot assign this Lease with respect to less than all of the Lands,

except with the prior written consent of the Lessor, with such consent to not be unreasonably withheld, granted subject to conditions, or delayed.

- 9.3 The Lessee will obtain from any proposed assignee a written agreement whereby the assignee covenants and agrees that it will observe and perform all of the covenants and agreements to be observed or performed by the Lessee under this Lease.
- 9.4 The assignment of this Lease by the Lessee will not relieve and discharge the Lessee from its obligations or liabilities under this Lease except to the extent such obligations are assumed in writing by the assignee.
- 9.5 The Lessee may assign leasehold interests in portions of the Lands without the consent of the Lessor or the First Nation Council, but otherwise subject to the Land Management Code and any other land use laws and related policies of the First Nation. The Lessor will, without payment of further rent or other consideration, promptly and without delay, sign such modifications of lease and replacement leases as are required to facilitate the Lessee effecting any assignment. The Lessee will reimburse the Lessor for any reasonable costs and expenses incurred by the Lessor to comply with its obligation pursuant to this Section 9.5.
- 9.6 No assignment will be valid unless it includes the following provisions:
- a) The assignee is bound by all terms of this Lease; and
 - b) In the event of conflict between the terms of this Lease and the assignment, the terms of this Lease will govern.
- 9.7 If the Lessee is one or more corporations, the shares of which are not publicly traded on any exchange, the Lessee will provide the Lessor with written notice of any change of control of such corporation forthwith upon that occurring.

10. SUBLETTING

- 10.1 From and after the Commencement Date, the Lessee shall have the right, subject to the applicable provisions of this Article 10, without the consent of the Lessor, to sublease all or part of the Lands or Premises to any Person, whether by a sublease, occupancy agreement, licence or other agreement granting rights for the use or occupancy of space in the Lands (each a "Sublease"), provided that the term of all and any Sublease is shorter than the Term (excluding any unexercised renewal, extension or overholding periods. Upon any Sublease of all or part of the Lands, the Lessee shall not be released from its obligations, covenants and liabilities under this Lease. If the Lands are subleased by the Lessee in violation of the provisions of this Article 10, such Sublease shall be void and of no force and effect against the Lessor and the Lessee shall be in default under this Section 10.1 of this Lease.
- 10.2 Any Sublease of the Lands or Premises will include the following provisions:
- a) The Sublease will be expressly subject and subordinate to this Lease and to the rights of the Lessor hereunder; and
 - b) The Sublease will oblige the sublessee to not do anything in contravention of this Lease and comply with all Applicable Laws.
- 10.3 The Lessor will, in the event of termination of this Lease, provided the sublessee has cured any defaults directly affecting their subleased premises; enter into leases or subleases directly with any then existing sublessees on the same terms as contained in the subleases then in effect. The reasonable legal, administrative and consulting costs and expenses of the Lessor required to issue such lease or sublease shall be payable by the party to whom the lease is to be granted.

11. NON-DISTURBANCE

- 11.1 The Lessor hereby covenants, to and in favor of the Lessee and for the benefit of every sublessee, mortgagee, licensee, permittee, or holder of any other interest in the Lessee's leasehold estate hereunder or in any interest derived therefrom (each of which parties is herein called an "Interested Party"), that if this Lease is cancelled for any reason whatsoever prior to the expiration of the Term or if any rights of the Lessee hereunder are cancelled, suspended or interfered with for any reason whatsoever, the Lessor will not disturb or interfere with the possession, interest or rights of any such Interested Party in respect of the Lands during the Term, and any renewal or extension provided that such Interested Party observes and performs for and in favor of the Lessor, its covenants and obligations contained in its sublease, mortgage, license, permit, concession or other instrument under which such Interested Party's interest in respect of the Lands arises. The Lessor will sign such non-disturbance agreements as may be reasonably requested, but subject always to payment of the Lessor's reasonable legal costs and other costs without delay, to confirm the Lessor's agreements relating hereto. Without limiting the generality of the foregoing, the non-disturbance agreement will contain the wording of Section 10.2 when the Interested Party is a sublessee.

12. UTILITIES AND ACCESS

- 12.1 The Lessor has provided at its own expense sewer, water and utilities required to be connected to the Project, complete and installed to the property line of the Lands.
- 12.2 The Lessee will pay for all water, gas, telephone, internet, light, power, heat, air-conditioning, natural gas, sewer and garbage disposal services and facilities used in the Premises.
- 12.3 No interruption of any service or facility provided to the Premises other than due to the negligence or willful act or omission of the Lessor or a person for whom the Lessor is responsible at law will be deemed to be a disturbance of the Lessee's enjoyment of the Premises or render the Lessor liable for injury to or in damages to the Lessee or relieve the Parties from their respective obligations under this Lease.
- 12.4 The Lessee will have the right to ingress and egress to and from the Lands over access roads and right of ways in common with other legally entitled thereto, and over the lands of the Lessor if required.
- 12.5 In the event of a fire or other public emergency, persons legally entitled to respond to such emergencies will be allowed access by the Lessee to or across the Lands.

13. TAXES

- 13.1 The Lessee will pay on or before the due date in each and every year during the Term all applicable taxes, trade licenses, rates, levies, duties and assessments of any kind lawfully imposed by any competent authority pursuant to Applicable Laws, whether in respect of the Premises, fixtures, machinery, equipment or business relating to the Premises or in respect of occupation of the Premises by anyone.
- 13.2 Without in any way relieving or modifying the obligation of the Lessee to comply with Section 13.1, the Lessee may at its own expense, contest or appeal the validity or amount of any taxes provided that the Lessee commences any proceedings to contest or appeal the validity or amount forthwith and continues with the proceedings with reasonable diligence.
- 13.3 The Lessee will, upon written request by the Lessor, provide the Lessor with copies of official receipts of the competent authority or other proof satisfactory to the Lessor, acting reasonably, evidencing payment of taxes payable with respect to the Premises.

- 13.4 The Lessee will pay and discharge all taxes, fees, levies, and/or assessments of any kind now charged or hereafter to be charged by the Lessor or any other competent authority

14. COMPLIANCE WITH LAWS

- 14.1 The Lessee agrees that at all times it shall, at its expense, observe and comply fully with all Applicable Laws. Without limiting the generality of the foregoing, the Lessee agrees that, at the Lessee's expense, it shall: (a) comply with all Environmental Laws, building standards by-laws, zoning by-laws, official plans, development approvals, and building permits relating to the Project; (b) promptly cure all violations of Applicable Laws for which the Lessee has received notice or for which a notice has been issued; (c) obtain all necessary approvals, consents, permits, and permissions for development of the Land and construction of the Improvements before commencing the work requiring such approval, consent, permit, or permission; and (d) pay all fines, penalties, interest, or other costs imposed by any Government Authority in connection with any violation of the Lessee of any Applicable Laws or to comply with any Applicable Laws.
- 14.2 Without in any way relieving or modifying the obligation of the Lessee to comply with Section 14.1, the Lessee may at its expense, contest or appeal the enforceability or validity of any of the Applicable Laws, provided that the Lessee commences any proceedings to contest or appeal the enforceability or validity thereof or any cost associated therewith immediately and continues with the proceedings with reasonable diligence.
- 14.3 The Lessee will, during the Term and at his own expense, promptly observe and comply with all Applicable Laws concerning the Lands and Improvements.
- 14.4 Without limiting the generality of paragraph 14.1, the Lessee will comply with all Applicable Laws, codes and standards applicable to the storage and handling of Hazardous Substances, including gasoline and propane.
- 14.5 The Applicable Laws, expressly referred to in paragraph 14.1 and 14.2 shall in any event be deemed to be requirements with which the Lessee shall comply as a covenant of this Lease.
- 14.6 If the Lessee is given notice of a breach of any of the Applicable Laws, or charged with any offence thereunder, or served with an order, work order or other notice in respect of them by a Government Authority or Lessor's representative, the Lessee shall forthwith provide a copy of such notice of breach, charge, order, work order or notice to the Lessor.

15. NUISANCE

- 15.1 The Lessee shall not use all or any part of the Premises, nor permit or suffer all or any part of the Premises to be used, for any lawful purpose nor for any purpose or in any manner that would constitute a nuisance of any kind to people using the surrounding properties, the Lessor, or the general public.

16. QUIET ENJOYMENT

- 16.1 The Lessee, by paying the Rent and observing and performing its covenants in this Lease, may peaceably and quietly possess, hold and enjoy the Lands during the Term without any interruption or disturbance by the Lessor or anyone claiming by or through either of them.

17. WASTE

- 17.1 The Lessee will not cause, permit or suffer the commission of any waste on the Lands.
- 17.2 The Lessee will not cause, permit or suffer the removal of any sand, gravel, topsoil, or other material constituting part of the Lands except as required by

construction, maintenance, repairs, alterations and replacements undertaken in connection with the Project or when in compliance with Applicable Laws, in which case, removal will not constitute waste.

18. RUBBISH

- 18.1 The Lessee will not cause, permit or suffer any rubbish or debris to be placed or left at the Premises except as is reasonably necessary in accordance with the uses permitted by Article 17, by the development, construction maintenance, repairs, alterations and replacements undertaken in connection with the Project or as permitted in writing by the Lessor, acting reasonably.

19. ENVIRONMENTAL STANDARDS

- 19.1 The Lessee will at all times conduct all business or activities on the Premises in compliance with Environmental Laws.

20. NO CONTAMINANTS

- 20.1 No Hazardous Substances will be used, emitted, discharged or stored on the Premises or any adjacent land by the Lessee, its officers, directors, invitees, agents, employees or sublessee except in strict compliance with Environmental Laws or lawful requirements of the federal or provincial government or authority, the First Nation Council or the Lands Manager or other lawful authority. The Lessee will immediately give written notice to the Lands Manager of the occurrence of any event in or on the Premises constituting an offence thereunder or being in breach thereof and, if the Lessee will, alone or with others, cause or permit the happening of such event, the Lessee will, at its own expense:

- (a) promptly remove the Hazardous Substances from the Premises in a manner which conforms with all such applicable Environmental Laws, permits, by-laws, ordinances, regulations, notices and orders governing the removal, movement and disposal of, Hazardous Substances; and
- (b) Provide all bonds or securities reasonably required by the Lessor or Government Authority having jurisdiction; and
- (c) if requested, obtain at the Lessee's expense, from an independent consultant designated or approved by the Lessor, acting reasonably, verification of the complete and proper removal of the Hazardous Substances from the Premises or, if such is not the case, reporting as to the extent of any failure of this Article 20.

21. COSTS ASSOCIATED WITH MITIGATION OF ENVIRONMENTAL IMPACTS

- 21.1 The Lessee will, at its own expense, remedy any damage to the Lands caused by the performance of the Lessee's obligations under Article 20 and forthwith provide to the Lands Manager a Remedial Plan detailing how it proposes to rectify such discharge of Hazardous Substances.
- 21.2 The Lessee will implement the appropriate technology, design or repair to mitigate anticipated or remediate actual adverse environmental impacts attributable to the Lessee's use of the Premises immediately following discovery or notice thereof by the Lessee. Further, the Lessee will permit the Lessor's representatives and the representatives of the First Nation Council to enter onto the Premises at all reasonable times and on reasonable prior written notice, to inspect and monitor the Lessee's activities in the course of mitigation and to ensure that the Lessee has taken reasonable steps to mitigate any reasonably anticipated or actual adverse impacts attributable to the Lessee on the Environment to the satisfaction of the Lessor. The Lessee may require that a representative of the Lessee be present.

22. POSSESSION OF HAZARDOUS SUBSTANCES

- 22.1 If the Lessee brings or creates upon the Premises or permits the bringing or creating thereon any Hazardous Substance, or if the conduct of the Lessee's business will cause there to be any Hazardous Substances, upon the Lands or the Premises notwithstanding any rule of law to the contrary, such Hazardous Substance, will be and remain the sole and exclusive property of the Lessee and will not become the property of the Lessor or the First Nation notwithstanding the degree of fixation of the Hazardous Substance, or the goods containing the Hazardous Substance, to the Premises and notwithstanding the expiry or earlier termination of this Lease.

23. SURVIVAL OF OBLIGATIONS

- 23.1 The obligations of the Lessee pursuant to Articles 18, 19, 20 and 32 will survive the expiry or earlier termination of this Lease, save only that, to the extent that the performance of these obligations requires access to or entry upon the Premises or any part thereof after the expiration or earlier termination of this Lease, the Lessee will be afforded reasonable entry and access for purposes at such times and upon such terms and conditions as the First Nation Council or the Lands Manager may from time to time reasonably specify in writing. If the Lessee, despite being afforded reasonable opportunities to perform such obligations, fails to do so, the Lessor may, at the Lessee's expense, by the Lessor's officers, employees, agents or contractors and subcontractors, undertake the performance of any necessary work in order to complete such obligations of the Lessee, but having commenced such work, the Lessor will have no obligation to the Lessee to complete such work.

24. ALTERATIONS AND ADDITIONS

- 24.1 The Lessee will not alter, remove, add to, replace, or make substitutions for the Improvements except in compliance with Applicable Laws.

25. NEW IMPROVEMENTS

- 25.1 The Lessee will not construct any new buildings, structures or other Improvements on, under or above the Lands except in compliance with Applicable Laws and to reasonable industry and construction standards.

26. REPAIR OF PREMISES

- 26.1 The Lessee will be solely responsible, in compliance with Applicable Laws, for the erection of any Improvements on the Lands and for the condition, operation, repair, replacement, maintenance and management of the Premises.

27. SIGNS

- 27.1 The Lessee will have the right to erect or exhibit signage, in accordance with Applicable Laws, in and about any portion of the Premises in conjunction with any lawful purpose described or contemplated in Article 6.

28. LIABILITY INSURANCE

- 28.1 It is the intent of the Parties that all risk of loss for the Premises be shifted to the Lessee's insurance, to the maximum extent practicable, and personally on to the Lessee to the extent not insured for by the Tenant's insurance, including, without limitation, for the Lessor's Parties' negligence. Accordingly, during the Term, the Lessee shall maintain, or cause to be maintained, the insurance required in accordance with this Article 28 of this Lease. Insurance maintained by the Lessor, if any, whether or not paid for, in whole or in part, by the Lessee, shall not release the Lessee from any liability under this Lease nor shift any liability onto the Lessor.
- 28.2 All insurance policies required to be maintained by the Lessee under Article 28 of this Lease shall:
- a) be written on an occurrence basis, except for errors and omissions insurance and environmental liability insurance issued on a claims-made or hybrid

- basis, or as otherwise consented to by the Lessor in writing prior to the issuance, amendment, or renewal of such policy;
- b) provide that such insurance is primary to and not contributory with any similar insurance carried by the Lessor, if any;
 - c) include the Landlord as an additional insured;
 - d) include an undertaking by the insurer in each policy not to cancel or make a material change to the policy without first giving the Lessor thirty (30) days' prior written notice of cancellation or material change;
 - e) not contain a co-insurance clause for property insurance policies; and
 - f) be with insurers licensed to conduct business in the province of Ontario and which have a high insurance company credit rating within the insurance industry.

Further, the Lessee will immediately notify the Lessor of any breaches of the insurance policy that it becomes aware of and provide a copy of any notices that it receives from the insurer in this regard.

- 28.3 At all times during the Term, the Lessee, at its expense, shall maintain commercial general liability insurance, on an occurrence basis, covering all claims and liability for bodily injury (including death) and property damage (including loss of use thereof), arising out of the ownership, development, construction, repair, demolition, occupancy, use, management, or maintenance of, or the operations on, the Premises, in an amount not less than FIVE MILLION Dollars (\$5,000,000.00) per occurrence. Such policy shall include cross-liability and severability of interest clauses in favour of the Lessor. Such policy shall include endorsements (or separate policies) for, without limitation, lessor's legal liability, contractual liability, non-owned automobile liability, owned automobile liability, personal injury, employment practices liability, and owners' and contractor's protective insurance. Without limiting the foregoing, the contractual liability endorsement shall cover the performance by the Lessee of the indemnities given by it in this Lease and all the Lessee's other insurable obligations under this Lease. However, the limit of this, or any other, insurance policy shall not limit the Lessee's liability under the indemnities given by it in this Lease or its liabilities under any other provisions of this Lease.
- 28.4 At all times during the Term, the Lessee, at its expense, shall maintain property insurance covering loss or damage to the Improvements, in an amount equal to the full replacement cost thereof, from "all risks" (as such term is used in the insurance industry in the province of Ontario) and additional perils including, without limitation, fire, flood, earthquake, sewer back-up, collapse, and by-laws.

29. INSURANCE VALIDATION

- 29.1 The Lessee will not do, permit or suffer anything to be done at the Premises which might cause any policy of insurance required by this Lease to be invalidated or cancelled, and the Lessee will comply forthwith every lawful notice in writing from the Lands Manager or any insurer requiring the execution of works or discontinuance of any use of the premises in order to avoid invalidation or cancellation of any insurance.
- 29.2 The Lessee releases and indemnifies the Lessor and the First Nation from all liability for loss or damage caused by or resulting from any of the perils or injury against which it has covenanted in this Lease to insure, except if the loss, damage or injury may arise out of the negligence or omission of the Lessor, the First Nation, its officers, employees, agents or contractors, and even though the Lessee has failed to so insure.
- 29.3 The Lessee will, upon reasonable request therefore, deliver certificates of the insurance evidencing every policy of insurance that is required by this Lease within a reasonable time after the insurance is effected and will, upon request, deliver a certificate of renewal that the insurance has been renewed or replaced at least ten (10) days before the expiry of any policy of insurance in force.
- 29.4 The Lessee will, upon written request, forthwith deliver a certified copy of every insurance policy taken out by the Lessee with respect to the Premises.

30. RESTORATION OR REPAIR OF DAMAGED PREMISES

- 30.1 Where the Lessee determines to restore or repair damage to the Premises, such restoration or repair will be carried out in good and workmanlike manner and with reasonable diligence and in compliance with Applicable Laws.
- 30.2 The Lessee, prior to commencing any work of restoring, rebuilding or replacing the Improvements, in whole or in part, will remove or screen unsightly rubble and debris resulting from damage or destruction and will keep the Lands in safe and secure condition. If the Lessee fails to perform such obligations in any material respect, the Lessor may, at the Lessee's expense, by the Lessor's officers, employees, agents or contractors and subcontractors, undertake the performance of any necessary work in order to complete such obligations of the Lessee, but having commenced such work, the Lessor will have no obligation to the Lessee to complete such work.

31. BUILDINGS, FIXTURES AND CHATTELS

- 31.1 Ownership of any Improvements made upon or to the Lands by or for the Lessee will vest in the Lessee or any sublessee, licensee, or permittee of the Lessee, as the case may be, for and during the Term, notwithstanding any rule or law to the contrary. Notwithstanding the foregoing, the Lessor will be entitled, on written notice to the Lessee delivered prior to the commencement of the last two years of the Term, setting out, if any, requirements of the Lessee to:
- a) Remove some or all its Improvements from the Lands upon expiry of the Term and leave the Lands in a clean and safe condition; and/or,
 - b) Leave some or all of the Improvements on the Lands (except trade fixtures and fixtures which contain proprietary elements of the Lessee or its sublessees which the Lessee and its sublessees shall be entitled to remove).
- 31.2 The Lessee will pay all costs and expenses incurred in the removal and disposal of the Improvements and in making good all damage caused to the Lands by the removal thereof forthwith upon demand. The Lessor and the First Nation will not be responsible to the Lessee or sublessee for any loss suffered by the Lessee or sublessee as a result of the removal or the disposal of any Improvements, moveable goods, chattels or tenant's fixtures and Improvements which the Lessee fails to remove in accordance herewith. If the Lessee does not remove and dispose of the Improvements as required, the Lessor may do so at the cost of the Lessee, including a ten per cent (10%) administration fee payable to the Lessor.

32. INDEMNITY

- 32.1 Except in the event of the negligence or willful act or omission of the Lessor, the Lessee will indemnify and save harmless the Lessor, the First Nation, the First Nation Council, the First Nation's officers, employees, agents or contractors, against and from all liability, loss, costs, claims, demands, expenses, actions, damages, suits and other proceedings, whatsoever, including consequential, howsoever arising out of or related to any breach of a Lessee's covenant or for personal injury, death or property damage or loss arising out of or related to any act or omission of the Lessee, its officers, employees or agents or any person for whom the Lessee is responsible, including a sublessee, licensee, franchisee, permittee or mortgagee in possession.

33. FORFEITURE

- 33.1 If the Lessee:
- a) Fails to pay the Rent when due under this Lease; or
 - b) Is alleged to be in material default of a material obligation hereunder; then the Lessor may give the Lessee notice of such default.

- 33.2 If the Lessor gives the Lessee notice of default under Section 33.1 and either:
- a) the default is a default mentioned in subsection 33.1(b) and is not cured within thirty (30) days after the notice is given, then, subject to the provisions of this Article 33 and to the rights of the parties under Article 46, the Lessor may by notice to the Lessee declare the Term ended; or
 - b) The default is a default mentioned in subsection 33.1(b) and
 - I. is reasonably capable of being cured within sixty (60) days after the notice is given, and the Lessee fails to cure the default within the sixty (60) days; or
 - II. is not reasonably capable of being cured within sixty (60) days after the notice is given and the Lessee fails to commence to cure the default with reasonable diligence upon receipt of the notice and to proceed to cure it with reasonable diligence to completion,

Then subject to the provisions of this Article 35 and to the rights of the parties under Article 46, the Lessor may seek an order of a court of competent jurisdiction ordering the termination of this Lease.

The Lessee will be entitled to seek from a court of competent jurisdiction relief from forfeiture in accordance with Applicable Laws in connection with a termination of this Lease in accordance with this Article 33.

- 33.3 If the Lessor declares the Term ended as provided in Section 33.2(a), or a court of competent jurisdiction ordering the termination of this Lease as provided in Section 33.2(b), then except as otherwise expressly provided in this Lease, and subject to the rights of the parties under Article 46, or otherwise at law, this Lease and everything contained in it and the leasehold estate and Term will thereupon terminate without re-entry or any other act or legal proceedings, and the Lessor may re-enter the Lands and possess and enjoy them as if the Lease had not been made.
- 33.4 Notwithstanding a declaration by the Lessor that the Term has ended, the Lessor will be entitled to recover from the Lessee the rent then accrued or accruing, and enforce any right of action against the Lessee in respect of any antecedent breach of any of the Lessee's covenants including a right of action under Article 32 and the reasonable costs and expenses of the Lessor in enforcing its rights.
- 33.5 No notice to the Lessee hereunder will be valid for any purpose unless and until a copy of such notice is also given to each mortgagee and sub lessee. The copy of such notice may be given to the mortgagee and sub lessee at the address specified by the mortgagee and sub lessee and otherwise on the same terms and conditions as applicable to notices referred to in Article 48.
- 33.6 Any curing of a default by a mortgagee or sublessee will be construed as curing of that default by the Lessee.
- 33.7 If any disagreement arises as to the occurrence or subsistence of a material default hereunder or whether the curing of any such default is promptly commenced, has been substantially completed or is proceeding with reasonable diligence, and without limiting any other remedies or relief that might be available to the Lessee, a mortgagee or sublessee in accordance herewith or at law, the question may be dealt with in accordance with Article 47 of this Lease.

33.8 The Lessor acknowledges that in consideration of the Rent, the Lessor will, to the fullest extent reasonably possible, seek recourse in respect of alleged material default by the Lessee hereunder by way of a claim in law against the Lessee for debt or damages, as the case may be, recoverable against the Lands or the rents derived therefrom by the Lessee, or seek an order of a court of competent jurisdiction restraining a continuing breach, and will not resort to exercising a right to cancel this Lease and forfeit the leasehold estate except in respect of a serious or continuing breach of a material covenant hereunder for which a reasonable and adequate alternate remedy has not been, or cannot reasonably be, obtained.

34. PERFORMANCE OF COVENANTS

34.1 All agreements, terms, conditions, provisions, duties and obligations to be performed or observed by the Lessee under this Lease will be deemed to be Lessee's covenants and all the Lessee's covenants in this Lease are made with the Lessor for the Lessee and for its successors and assigns. Without limiting any other remedy of the Lessor under this Lease, the Lessor may request the Lessee in writing to perform the covenant, and if the Lessee does not perform it within thirty (30) days of such order the Lessor may, but will not be obligated to, do whatever is reasonably necessary to perform it. The Lessee will pay to the Lessor any cost or expense reasonably incurred by the Lessor in performing the covenant or enforcing its rights under this Lease forthwith upon demand by the Lessor.

34.2 The Lessee will provide the First Nation Council, their officers, employees, agents, contractors and subcontractors, with and without vehicles and equipment, convenient access to the Premises at all reasonable times on reasonable prior written notice, except in the case of an emergency, for the purposes of viewing the Premises and otherwise determining that the Lessee's covenants are being duly observed and performed. The Lessee may require that a representative of the Lessee be present provided that such representative is available on reasonable notice.

34.3 The Lessee will also provide the First Nation Council, their officers, employees, agents, contractors and subcontractors with and without vehicles and equipment all reasonable and necessary access to the Premises for the purpose of performing the Lessee's covenants pursuant to Section 34.1.

35. PAYMENTS PAID BY LESSOR COLLECTABLE AS RENT

35.1 If at any time before or after the expiration or earlier termination of the Lease the Lessor suffers or incurs any damage, loss or expense by reason of any failure of the Lessee to perform or observe any of the Lessee's covenants or makes any payment for which the Lessee is liable under this Lease, or if the Lessor is compelled or, acting reasonably, elects to incur any expense including legal fees in instituting, prosecuting or defending any action or proceeding instituted by reason of any default of the Lessee under this Lease (including any action or proceeding against the Lessee) and succeeds in establishing such default, then in every such case the amount of damage, loss, expense or payment (including legal fees on a solicitor-client basis), together with interest as provided in Section 36.1, will be paid by the Lessee to the Lessor forthwith on demand.

35.2 The amount of any damage, loss, expense or payment referred to in Section 35.1 will be recoverable in the manner provided by law for the recovery of rent in arrears.

36. ARREARS TO BEAR INTEREST

- 36.1 If the Rent or any other sum owing by the Lessee to the Lessor under this Lease is not paid within thirty (30) days from the date on which it is due then it will bear interest at the Prime Rate as set forth in the Bank of Canada Review in effect from time to time plus four percent (4%) per annum from the date the Rent or the sum is due until the date of the payment by the Lessee, but this stipulation for interest will not prejudice or affect any other remedies of the Lessor under this Lease or otherwise, or be construed to relieve the Lessee from any default in making the Rent payment at the time and in the manner specified in this Lease.

37. REMEDIES CUMULATIVE

- 37.1 All rights and remedies of the Lessor are cumulative and are in addition to and do not exclude any other right or remedy provided in this Lease or otherwise allowed by law.

- 37.2 All rights and remedies of the Lessor may be exercised concurrently.

38. SURRENDER OF POSSESSION

- 38.1 Subject to Article 31, when the Term expires or otherwise ends, the Lessee will peaceably surrender the Lands and the Improvements, as applicable, as provided in this Lease.

39. HOLDING OVER

- 39.1 There shall be no holding over except with the express written consent of the Lessor.

40. NET LEASE

- 40.1 This Lease is to be a completely carefree net lease and except as otherwise set out herein the Lessor is not to be responsible during the Term for any costs, charges, expenses or outlays of any nature in respect of the Premises.

- 40.2 The Lessee will be responsible for prompt payment of the Lessor's reasonable direct out of pocket expenses incurred in connection with execution and delivery of further and other documents when required hereunder or in connection herewith.

41. REPRESENTATIONS AND WARRANTIES OF THE LESSOR

- 41.1 Except as otherwise set out herein, no representation, warranties or conditions have been made to the Lessee in respect of the Lands by the Lessor, the First Nation, its First Nation Council Members, Officials, servants and agents.

- 41.2 The Lessor represents and warrants to the Lessee, and acknowledges that the Lessee is relying thereon, that:

- a) it will take all commercial best efforts promptly when requested from time to time by the Lessee to ensure satisfactory access to the Premises by public or private road or right of way, and from and when such access is obtained the Lessee's obligations hereunder are subject to such access remaining available during the Term;
- b) the Lands are capable for development pursuant to the Lessee's