

**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 RESPONDENTS, GLENN PAGE AND
2658658 ONTARIO INC
(MOTION FOR APPOINTMENT OF A CHIEF RESTRUCTURING OFFICER)**

October 2, 2023

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TO: **THE SERVICE LIST**

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Applicants

NOTICE OF MOTION
(Motion for Appointment of a Chief Restructuring Officer)

The Respondents, Glenn Page and 2658658 Ontario Inc., will make a motion to a Judge on October 4, 2023 at 10:00 a.m. or as soon after that time as the motion can be heard.

PROPOSED METHOD OF HEARING: The motion is to be heard in person.

THE MOTION IS FOR AN ORDER:

- (a) appointing William Aziz of BlueTree Advisors as Chief Restructuring Officer (“CRO”) in the form of Schedule “A” to this Notice of Motion;
- (b) directing Scott Hill and Miles Hill to fully cooperate with the CRO;
- (c) directing that any sales process for the OTE Group’s assets include the Certificate of Possession currently held by Scott Hill for Lot 32-7 Concession 1 Township Tuscarora CLSR 65905, the parcel on Six Nations Reserve No. 40 where the OTE Head Office and the Six Nations Blending Location are located;

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- (d) the adjournment, if necessary, of the OTE Group's proposed motion dated September 25, 2023 for a sales process and other ancillary relief;
- (e) an Order, if necessary, validating and abridging the time for service and filing of this Notice of Motion and Motion Record, and dispensing with any further service thereof; and
- (f) such further and other relief as this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

A. BACKGROUND – SCOTT HILL AND MILES HILL AND THE OTE GROUP

- (a) Scott Hill is the sole director of the Applicant OTE GP. On July 14, 2022, Scott Hill became the President of OTE GP. Prior to that, Scott Hill was the Vice-President of OTE GP.
- (b) Miles Hill is Scott Hill's brother and on July 14, 2022, Miles Hill became the Vice-President of OTE GP. Miles Hill had no day to day responsibility for the operations of OTE GP.
- (c) OTE GP is the General Partner of Original Traders Energy LP ("**OTE LP**").
- (d) As President, Secretary and Treasurer of 249, Miles Hill is the sole officer and director of the Applicant 2496750 Ontario Inc. ("**249**") which is the General Partner of OTE Logistics LP ("**OTE Logistics**").
- (e) Practically speaking, Miles Hill's interest in 249 and OTE Logistics has been passive. He has not historically exercised any authority.

- (f) It is not clear whether or not Miles has resigned from his roles with any of the OTE Group entities.
- (g) Together, the Applicants OTE GP, 249 and the Limited Partnership OTE LP and OTE Logistics are the **OTE Group**.
- (h) Scott Hill and Miles Hill are each registered as an “Indian” within the meaning of the *Indian Act* and each is a member of the Six Nations of the Grand River residing on the Six Nations Reserve in Ontario.
- (i) OTE LP is a limited partnership formed to carry on the business of blending and selling gasoline to independent gas station businesses on First Nations reserves at advantageous prices.
- (j) In order to execute on OTE LP’s business strategy, it was critical that Indigenous individuals with status under the *Indian Act* hold a majority interest in OTE LP and its general partner – in this case, Miles Hill and Scott Hill.

B. THE BLENDING LOCATIONS

- (k) At the commencement of the CCAA Proceedings, the OTE Group had three blending locations, Tyendinaga, Whitefish and Six Nations.
 - (i) ***Six Nations Blending Location***
 - (l) The OTE LP Head Office and the Six Nations Blending Location are located at Lot 32-7 Concession 1 Township Tuscarora CLSR 65905 (municipal address 7263 and

7273 Indian Line Road, Scotland Ontario), on Six Nations Reserve No. 40 (the “**Six Nations Premises**”).

- (m) The provisions of the *Indian Act*, RSC 1985, c I-5 apply to the possession and use of lands on Six Nations Reserve No. 40.
- (n) The certificate of possession for the land where the OTE Head Office and Six Nations Blending Location is held by Scott Hill.
- (o) Scott Hill received his units of OTE LP on the understanding and with the expectation that OTE LP would receive the benefit of his certificate of possession in respect of the Six Nations Premises. OTE LP invested in the Six Nations Premises on this same basis and with this same expectation.
- (p) Scott Hill has deposed that there is an “informal, oral lease agreement in place” for the Head Office and the Six Nations Blending Location.
- (q) As holder of the certificate of possession, Scott Hill is the counterparty to the “informal, oral lease agreement”.
- (r) No ministerial approval was obtained in respect of the “informal, oral lease agreement in place” for the Head Office and the Six Nations Blending Location.
- (ii) ***Tyendinaga Blending Location***
- (s) The Tyendinaga Blending Location is located on Tyendinaga Mohawk Territory, the reserve of the Mohawks of the Bay of Quinte.

- (t) The provisions of the *Indian Act*, RSC 1985, c I-5 apply to the possession and use of lands on Tyendinaga Mohawk Territory.
 - (u) The certificates of possession for the land where the Tyendinaga Blending Location is located are held by Tom Maracle, an arms-length third party.
 - (v) A formal written lease, with a term of 20 years commencing as of February 2020, was concluded between Tom Maracle and OTE LP in respect of the Tyendinaga Blending Location.
 - (w) No ministerial approval was obtained in respect of this lease.
 - (x) The Tyendinaga lease provides that “it is not a lease entered into pursuant to the *Indian Act*” and that the Tenant may not “assign, transfer, sublet or otherwise part with possession of the Premises in whole or in part, in any manner whatsoever without the prior written consent of the Landlord, which consent may be arbitrarily and unreasonably withheld in the Landlord’s sole and absolute discretion”.
- (iii) *Whitefish Blending Location***
- (y) The Whitefish Blending Location is located on Whitefish Lake Reserve No. 6, the reserve of Atikameksheng Anishnawbek First Nation.
 - (z) The provisions of the Framework Agreement on First Nation Land Management, the *Framework Agreement on First Nation Land Management Act*, SC 2022, c 19, s 121 and the Atikameksheng Anishnawbek (Whitefish Lake) Land Management

Code 2008 apply to the possession and use of lands on Whitefish Lake Reserve No. 6.

- (aa) The lands where the Whitefish Blending Location is located are subject to a head lease between Atikameksheng Anishnawbek First Nation and Chi-Zhiingwaak Business Park Inc., and a sub-lease between Chi-Zhiingwaak Business Park Inc. and OTE LP.
- (bb) The sub-lease interest of OTE LP is registered on First Nation Lands Register maintained by the Minister of Crown-Indigenous Relations pursuant to the *Framework Agreement on First Nation Land Management Act* and on the Atikameksheng Anishnawbek Lands Register maintained pursuant to the Atikameksheng Anishnawbek (Whitefish Lake) Land Management Code 2008.
- (cc) The sub-lease interest of OTE LP in the Whitefish Blending Location is for a term of 35 years commencing September 2021.
- (dd) Under the terms of the sub-lease, OTE LP may assign, sublet, transfer or otherwise part with possession of the lease, in whole or in part, with the consent of the Landlord in writing, “which consent will not be unreasonably withheld”.
- (iv) ***The Discontinued Locations***
- (ee) The OTE Group and Scott Hill first disclosed to OTE Stakeholders and this Court in Scott Hill’s Seventh Affidavit that operations at the Tyendinaga and Whitefish blending locations had been discontinued at some point following the Fourth Report of the Monitor (the “**Discontinued Locations**”), and that all movable assets

and equipment belonging to the OTE Group have been removed from these locations and transferred to the Six Nations Blending Location.

(ff) There is no explanation in the Motion Record or the Monitor's Report as to why all the operations were moved to the Six Nations Blending Location and not the Whitefish Blending Location where OTE LP has a duly registered sub-lease that is legally enforceable under the Atikameksheng Anishnawbek (Whitefish Lake) Land Management Code 2008, the Framework Agreement on First Nation Land Management and the *Framework Agreement on First Nation Land Management Act*, SC 2022, c 19, s 121.

(v) ***OTE Group Customers***

(gg) According to the Seventh Hill Affidavit and the Monitor's Report, the motion for a sales process is based in part on the fact that certain "key customers" have ceased their relationship with the OTE Group.

(hh) Neither OTE's Motion Record nor the Monitor's Report disclose who the lost customers are or why those customers have ceased their relationship with the OTE Group.

(ii) There is no disclosure as to whether the lost customers include the three stations which are run or owned by Miles Hill (Townline Variety, Bearpaw Gas Bar) or by Scott Hill (Renmar Energy).

C. THE BID PROCESS

- (jj) The bid process described by the OTE Group and the Monitor is proposed to occur “on an ‘as is, where is’ basis, without surviving representations or warranties of any kind, nature or description by the OTE Group, the Monitor or any of their respective agents, advisors or estates”.
- (kk) Neither Scott Hill’s Seventh Affidavit nor the Monitor’s 5th Report in support of the sales process refer to the fact that Scott Hill holds the certificate of possession for parcel where the Six Nations Blending Location is located and the lease held by OTE LP for this location.
- (ll) The bid process contemplates that the OTE Group (which is managed by Scott and Miles Hill) would determine the acceptability of binding offers for the OTE Group assets.
- (mm) Under the guise of the Reduced Operations Plan, at the direction of Scott Hill, the assets of the OTE Group have been concentrated in the location that maximizes Scott Hill’s personal interests.
- (nn) No buyer of the OTE Group assets can conduct the business of the Six Nations Blending Location without the approval and cooperation of Scott Hill in his capacity as holder of the certificate of possession.
- (oo) In the absence of a surviving representation or warranty from the holder of the certificate of possession that the business will be permitted to continue to be conducted from the lands where the Six Nations Blending Location is located, any

buyer of the Six Nations Blending Location risks acquiring a legally unenforceable interest.

- (pp) The bid process proposed by the OTE Group has been designed to favour a bidder working in coordination with Scott Hill.

D. ADDITIONAL CONCERNS

- (qq) The affidavit of Brian Page sworn on September 22, 2023 raises a number of additional concerns about the conduct of Scott and Miles Hill in running the OTE Group including:
 - (i) the potential illegal import of machinery for the manufacture of tobacco products;
 - (ii) the potential deliberate transition of the business of OTE LP or OTE Logistics LP to other parties in which he may hold an interest or gain a benefit; and,
 - (iii) the failure to remit taxes.
- (rr) The financial statements of the OTE Group include notes payable by Scott and Miles Hill;
- (ss) The extent of the conflict of interest cannot be ascertained without a cross-examination of Scott Hill. A Notice of Examination has been delivered for the cross-examination of Scott Hill to take place on October 12, 2023.

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- (tt) Due to their fundamental conflicts of interest, Scott and Miles Hill are unreasonably impairing or is likely to unreasonably impair the possibility of a viable compromise or arrangement being made in respect of the OTE Group.

E. APPOINTMENT OF CHIEF RESTRUCTURING OFFICER

- (uu) In order to ensure an orderly and restructuring or sale of the OTE Group, the OTE Group requires an independent CRO free of conflict and with the business acumen necessary to achieve a restructuring of the OTE Group.
- (vv) The appointment of a CRO is appropriate where such expertise will assist the applicants in achieving the objectives of the CCAA.
- (ww) Scott and Miles Hill do not have the independence, background or expertise to lead the OTE Group through a successful restructuring.
- (xx) The independence of the CRO would ensure that the interests of all stakeholders are protected and that any alleged concerns in relation to the OTE Group (and in particular, with Scott and Miles Hill) would be addressed.
- (yy) Installation of a CRO would allow the decisions made by the OTE Group to be done with the business skills necessary in a CCAA situation by a party experienced in these matters.
- (zz) William Aziz is the President and CEO of BlueTree Advisors. Appointment of Mr. Aziz as the CRO is appropriate because:
 - (i) Mr. Aziz is independent and has no relation with the OTE Group;

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- (ii) Mr. Aziz is a respected insolvency and restructuring specialist with a proven track record;
 - (iii) Mr. Aziz has the experience and skillset to address the issues facing the OTE Group, including a potential sales process, effectively and efficiently;
 - (iv) Mr. Aziz can lead discussions on marketing assets of the OTE Group on behalf of the OTE Group; and,
 - (v) Mr. Aziz has consented to being appointed CRO.
- (aaa) Having regard to the cash on hand the amount of the secured debt, secured credits are not likely to be affected by the proposed appointment of a CRO and unsecured creditors are unlikely to benefit from Mr. Aziz's appointment.

F. ADJOURNMENT OF SALES PROCESS MOTION, IF NECESSARY

- (bbb) On September 18, 2023, the OTE Group's counsel advised that it intended to use the scheduled October 4 hearing date to seek, among other relief, a sales process and a stay extension (the "**Proposed Motion**"), and whether any parties had any concerns over the additional relief being addressed on that date.
- (ccc) The October 4 hearing date was scheduled for the motion to set aside the Order of Justice Osborne dated March 15, 2023 and for production of financial documentation by the OTE Group and the Monitor, which motion has been settled.

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- (ddd) On September 20, 2023, Mr. Page and 2658658 Ontario Inc.'s counsel advised that they could not provide a position or raise any concerns on the Proposed Motion until they had an opportunity to review the motion materials.
- (eee) The OTE Group's Proposed Motion has not been scheduled.
- (fff) The OTE Group delivered its Motion Record and Factum for the Proposed Motion on September 25 and 28, 2023, respectively.
- (ggg) The Monitor delivered the Fifth Report of the Monitor on September 28, 2023.
- (hhh) The Respondents have delivered a Notice of Examination to cross-examine Scott Hill on October 12, 2023.
- (iii) On September 29, 2023, the Respondents' counsel advised the OTE Group that they do not agree that the motion for the sales process be heard on October 4, 2023.
- (jjj) Pursuant to the Order of Justice Kimmel dated July 17, 2023, the Stay Period does not expire until November 3, 2023.
- (kkk) There is no prejudice for the Proposed Motion to be adjourned.

G. GENERALLY

- (lll) The *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended.
- (mmm) Rules 1.04, 2.01, 2.03, 39 and 57 of the *Rules of Civil Procedure*.
- (nnn) Provisions of the *CCAA*, including without limitations section 11, and the inherent and equitable jurisdiction of this Honourable Court.

(ooo) Such further and other grounds as the lawyers may advise.

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

- (a) the Affidavit of Lauren Nixon sworn on October 2, 2023;
- (b) the Affidavit of Elizabeth Lalonde sworn on October 2, 2023;
- (c) the Affidavit of Brian Page sworn on September 22, 2023;
- (d) the transcript of the cross-examination of Scott Hill to be conducted;
- (e) such further and other evidence as the lawyers may advise and this Honourable Court may permit.

October 2, 2023

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TO: **THE SERVICE LIST**

ORIGINAL TRADERS ENERGY LTD.
Applicant

GLENN PAGE et al.
Respondents

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

NOTICE OF MOTION
(Returnable on a Date to be Established)

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THE HONOURABLE)	WEDNESDAY, THE 4 th
)	
JUSTICE STEELE)	DAY OF OCTOBER, 2023

B E T W E E N:

(Court Seal)

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

**ORDER
(MOTION FOR APPOINTMENT OF A CHIEF RESTRUCTURING OFFICER)**

THIS MOTION, made by Glenn Page and 2658658 Ontario Inc. (“**265**”) (collectively, the “**Respondents**”), for the relief set out in the Notice of Motion of Glenn Page and 265 dated October 2, 2023, was heard this day at the Court House, 330 University Avenue, Toronto, ON M5G 1R7.

ON READING the Notice of Motion and Motion Record of the Respondents, the Fifth Report of the Monitor, the Motion Record of the Original Traders Energy Ltd. (“**OTE GP**”), 2496750 Ontario Inc., OTE Logistics LP, and Original Traders Energy LP (“**OTE LP**”) (collectively the “**Applicants**” and the “**OTE Group**”, variously) dated September 25, 2023, and on hearing the submissions of counsel for the Respondents and counsel for the Applicants, the

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Monitor and those other parties present and listed on counsel slip, and on being advised that the secured creditors who are likely to be affected by this Order and are not present were given notice:

1. **THIS COURT ORDERS** that capitalized terms used herein and not otherwise defined shall have the meaning given to them in the Initial Order granted by this Court on January 30, 2023 (as the same has been amended and restated and may be amended and restated from time to time, the “Initial Order”).

2. **THIS COURT ORDERS** that the time for service of the Notice of Motion and Motion Record herein is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

CHIEF RESTRUCTURING OFFICER

3. **THIS COURT ORDERS** that William Aziz of BlueTree Advisors is hereby appointed as Chief Restructuring Officer of the OTE Group on the terms set forth in Appendix A to this Order, which terms are hereby incorporated into this Order (the “**Engagement Letter**”), and, in that capacity, is authorized and empowered to exercise the duties, services and powers set out below:

- (a) full power and exclusive authority on behalf of the OTE Group to manage, conduct, control, administer, operate and restructure the business and affairs of the OTE Group, including, without limitation, the power to relocate and exercise conservatory measures in respect of personal property;
- (b) negotiate and file a plan of compromise and arrangement for consideration by creditors and this Court;

- (c) take such measures necessary or appropriate for the business of the OTE Group or ancillary thereto;
- (d) permanently or temporarily cease, downsize or shut down any of the OTE Group business or operations;
- (e) terminate the employment of employees of OTE Group or temporarily lay off employees as it deems appropriate;
- (f) pursue all avenues of refinancing of the OTE Group business or property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing;
- (g) acquire, own, manage, administer, convert, develop, operate, sell, exchange, transfer, dispose of or otherwise deal with any and all assets of the OTE Group as may be necessary, convenient or beneficial for the OTE Group and in general to engage in any and all phases of the business of the OTE Group, subject to prior approval of this Court being obtained before any material refinancing;
- (h) open and operate one or more bank accounts, with full and exclusive signing authority on behalf of the OTE Group in order to deposit, disburse and distribute funds of the OTE Group, and change the signatory on the existing bank accounts as needed;

- (i) incur expenses and enter into, perform and carry out contracts or commitments of any kind, assume obligations and execute, deliver, acknowledge and file documents in furtherance of the business of the OTE Group;
- (j) pay all taxes, fees, legal costs and other expenses of the OTE Group;
- (k) act on behalf of the OTE Group with respect to any and all actions or other proceedings brought by or against the OTE Group and pay, collect, compromise or otherwise adjust, contest or settle any and all claims or demands of or against the OTE Group;
- (l) execute any and all deeds, documents and instruments and to do all other acts as may be necessary or desirable to carry out the intent and purpose of these duties;
- (m) lead day to day operations of the OTE Group, their respective real property development projects, including with respect to the completion and sale of the projects;
- (n) receive all mail to the OTE Group and redirect all mail or change the OTE Group's mailing addresses, as required;
- (o) assist and consult with the Monitor as may be necessary; and,
- (p) do such other things as are contemplated by or as are corollary to the Engagement Letter.

4. **THIS COURT ORDERS** that the CRO shall have the same protections afforded to the Monitor pursuant to the Initial Order and by s. 11.8 of the CCAA, and to a trustee by s. 14.06 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended.

5. **THIS COURT ORDERS** that the Applicants, Miles Hill and Scott Hill and their respective advisors, shall cooperate fully with the CRO and any directions it may provide pursuant to this Order and shall provide the CRO with such assistance as the CRO may request from time to time to enable the CRO to carry out its duties and powers as set out in this Order, or any other Order of this Court under the CCAA or applicable law generally.

6. **THIS COURT ORDERS** that any sales process for the OTE Group's assets shall include the Certificate of Possession held by Scott Hill for Lot 32-7 Concession 1 Township Tuscarora CLSR 65905, the parcel on Six Nations Reserve No. 40 where the OTE Head Office and the Six Nations Blending Location are located.

GENERAL

7. **THIS COURT ORDERS** that the OTE Group's motion dated September 25, 2023 for a sales process and other ancillary relief is hereby adjourned to a date to be decided.

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

9. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or elsewhere, to give effect to this

Order and to assist the CRO, the Monitor, and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the CRO and to the Monitor and their respective agents, as may be necessary or desirable to give effect to this Order, and to grant representative status to the CRO and the Monitor in any foreign proceeding.

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

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



October 2, 2023

Original Traders Energy Ltd. and 2496750 Ontario Inc. (as “**Applicants**”) together with OTE Logistics LP and Original Traders Energy LP (with OTE Logistics LP, the “**Partnerships**” and collectively with the Applicants, the “**OTE Group**” or the “**Company**”)

Appointment of BlueTree Advisors Inc.

This engagement letter (“**Engagement**”) sets out the terms and conditions upon which BlueTree Advisors Inc. (“**BlueTree**”) is appointed to provide the services of William E. Aziz (“**Aziz**”) as an independent contractor to perform the duties set out herein as Chief Restructuring Officer of OTE Group.

The OTE Group requires assistance in connection with certain *Companies’ Creditors Arrangement Act* (Canada) (“**CCAA**”) proceedings (the “**CCAA Proceedings**”) that were commenced by it on January 30, 2023. As BlueTree and Aziz are prepared to provide such assistance on the basis that they will be relieved from all claims, damages and losses, including any claims regarding environmental matters and any claims regarding matters for which a director of OTE Group may be personally liable, other than claims arising from their gross negligence or wilful misconduct, including, without limitation, in accordance with an order incorporating the protections referenced in s.11.8(3) of the CCAA or s.14.06(2) of the *Bankruptcy and Insolvency Act* (Canada) (“**BIA**”).

1. The Services

The services to be provided by BlueTree shall include the following (which are subject to ongoing supervision and direction by the court presiding over the CCAA Proceedings (the “**Court**”), and the terms of any order issued by the Court in the CCAA Proceedings):

- (a) the development and implementation of a plan of compromise and arrangement in respect of the OTE Group providing for, among other things, the release of claims against the members of the OTE Group and their current and former directors and officers, in a form satisfactory to creditors (a “**Restructuring Plan**”);
- (b) advising and assisting with any sales and investments solicitation process in respect of all or part of OTE Group’s business or assets (the “**SISP**”), including

successfully completing a transaction in respect of all or any part of OTE Group's business or assets (a "**Transaction**");

- (c) communicating and negotiating with all stakeholder groups of OTE Group with a view to successfully implementing a Restructuring Plan and/or a Transaction;
- (d) signing for or on behalf of OTE Group such documents, instruments, certificates or affidavits as may reasonably be required to commence or implement a Restructuring Plan and/or a Transaction; and
- (e) such other or incidental matters as maybe thought necessary or advisable by BlueTree in consultation with the stakeholders of OTE Group, while at all times acting with respect to the fiduciary duties required of an officer of OTE Group.

BlueTree may not provide the services of any person other than Aziz without the prior written approval of the Monitor in the CCAA Proceedings or the Court. The services of BlueTree do not include any authority for, or charge, management or control of, any sites or facilities at or on which OTE Group operates or for any day-to-day operations or operating activities of any of OTE Group's business, including, without limitation, any responsibility for environmental matters.

2. **Information**

BlueTree shall be entitled to rely on the material accuracy and completeness of all information provided to BlueTree, directly or indirectly, orally or in writing, in connection with this engagement. BlueTree shall be under no obligation to verify independently any such information provided to or otherwise obtained by it. BlueTree shall also be under no obligation to determine whether there have been any changes in such information or to investigate any change in such information occurring after the date any of the same were provided to or obtained by BlueTree.

3. **Fees and Expenses**

BlueTree's compensation for services referred to above will be as follows:

- (a) a work fee (the "**Work Fee**") of USD \$75,000 per month payable in advance commencing on the date of its appointment, and then on the corresponding day of each month going forward, or when that day falls on a non-business day, on the first business day thereafter.
- (b) a fee (the "**Success Fee**") payable in cash, which payment shall be triggered on the occurrence of a Triggering Event as follows:
 - (i) USD \$200,000 on the completion of a Transaction, which may, without limitation take the form of:

- (1) a merger, consolidation, reorganization, recapitalization, refinancing, business combination or other transaction (including for greater certainty a credit bid) pursuant to which a substantial portion of OTE Group is acquired by, or combined with, any person, group of persons, partnership, corporation or other entity (including, without limitation, existing creditors, employees, affiliates, and/or shareholders of OTE Group) (collectively, a “**Purchaser**”);
 - (2) any acquisition, directly or indirectly, by a Purchaser (or by one or more persons acting together with a Purchaser pursuant to a written agreement or otherwise), in a single transaction or a series of transactions (including for greater certainty a credit bid), of (x) all or substantially all of the assets or operations of any entity comprising OTE Group; or (y) all or substantially all of the outstanding or newly-issued shares or units of equity securities of any entity comprising OTE Group (or any securities convertible into, or options, warrants or other rights to acquire such equity securities);
 - (3) any other sale, transfer or assumption of a substantial portion of the assets or liabilities of OTE Group (including, without limitation, any consolidation or merger involving any entity comprising OTE Group), provided however that a liquidation of OTE Group’s assets by auctioneers or other liquidators shall not be a Triggering Event unless BlueTree is actively involved in providing the services of Aziz throughout the course of such auction or liquidation and until the proceeds of such auction or liquidation are received;
 - (4) except with respect to any interim and / or court-approved debtor-in-possession financing, the issuance, whether public or private, of substantial financing to and/or equity securities of any entity comprising OTE Group; and
 - (5) the confirmation of any plan of compromise or arrangement with respect to any entity comprising OTE Group effecting any of the foregoing;
- (ii) The following amounts on implementation of a Restructuring Plan:
- (1) \$500,000 in the event that the Restructuring Plan is filed in a form that is reasonably expected to be accepted by the requisite majority of creditors prior to December 31, 2023;

- (2) \$400,000 in the event that the Restructuring Plan is filed in a form that is reasonably expected to be accepted by the requisite majority of creditors prior to March 31, 2024; and,
 - (3) \$300,000 in the event that the Restructuring Plan is filed in a form that is reasonably expected to be accepted by the requisite majority of creditors prior to June 30, 2024.
- (c) BlueTree shall be entitled to a Work Fee for a minimum period of two (2) months if this Engagement is terminated by OTE Group (other than as a result of a default by BlueTree hereunder) before a Transaction. BlueTree acknowledges that OTE Group may require the services of BlueTree even if a Transaction is completed prior to the period ending on the two (2) month anniversary of this Engagement.

The Success Fee will be payable if the events in paragraph 3(b) are completed or implemented (as the case may be) during the term of this engagement or within a period of six (6) months following: (i) the termination of this engagement by OTE Group other than as a result of a breach of this Engagement by BlueTree or (ii) the termination of the Engagement by BlueTree as a result of the breach of this Engagement by OTE Group. However, no Success Fee will be payable if BlueTree terminates this Engagement in accordance with Section 6.

In addition to the foregoing OTE Group shall reimburse BlueTree for its reasonable out-of-pocket expenses including, but not limited to, legal fees, travel and communications expenses, courier charges and accommodation expenses, any of which may be incurred by BlueTree without prior written consent. Such reimbursable expenses will be payable on receipt of BlueTree's invoices by OTE Group.

All or part of the foregoing may be subject to federal Goods and Services Tax, Harmonized Sales Tax, British Columbia Provincial Sales Tax or other taxes ("GST/HST"). Where such tax is applicable, an additional amount equal to the amount of tax owing thereon will be charged to and payable by OTE Group, in addition to the fees of BlueTree. BlueTree shall provide its GST/HST registration number to OTE Group upon execution of this Engagement.

4. **Other Services**

If BlueTree is required to perform services in addition to those described above or to provide services of individuals other than Aziz, then the terms and conditions relating to such services will be outlined in a separate Engagement and the fees for such services will be in addition to the fees payable hereunder and will be negotiated separately and in good faith.

5. **Indemnity**

OTE Group shall indemnify BlueTree (the "**Indemnity**"). The Indemnity shall be in addition to and not in substitution for any other liability which OTE Group or any other person may have to BlueTree or any other persons indemnified pursuant to indemnities apart from such Indemnity.

To the extent that OTE Group currently maintains director and officer insurance, OTE Group will continue to benefit from, to the extent possible or practicable, the director and officer insurance coverage that was in place as at the date of Blue Tree's appointment, or coverage substantially comparable to that insurance, that includes confirmation from the underwriters that Aziz is fully covered by the insurance as an "Insured Person" within the meaning of any such policy.

In connection with this Engagement and without limiting the generality of the foregoing, OTE Group shall indemnify and hold harmless BlueTree and Aziz from and against any and all losses, expenses, claims, actions, damages and liabilities, joint or several, including the aggregate amount paid in reasonable settlement of any actions, suits, proceedings, investigations or claims and the reasonable fees and expenses of legal counsel on a solicitor and its or his own client basis that may be incurred in advising with respect to and/or defending any action, suit, proceeding, investigation or claim that may be made or threatened against either of BlueTree or Aziz or in enforcing this indemnity (collectively, the "**Claims**") to which BlueTree and/or Aziz may become subject to or otherwise involved in any capacity insofar as the Claims relate to, are caused by, result from, arise in respect of or are based upon, directly or indirectly, this engagement; provided however that OTE Group shall not be required to indemnify BlueTree or Aziz for such Claims to the extent that any such Claims are determined by a court of competent jurisdiction in a final judgment that has become non-appealable to have resulted from the gross negligence or willful misconduct of BlueTree or Aziz.

Furthermore, BlueTree and Aziz shall not have any liability (whether directly or indirectly in contract or tort or otherwise) to OTE Group or any person asserting claims on behalf of or in right of OTE Group for or in connection with this engagement except to the extent any losses, expenses, claims, actions, damages or liabilities incurred by OTE Group are determined by a court of competent jurisdiction in a final judgment that has become non-appealable to have resulted from the gross negligence or wilful misconduct of BlueTree or Aziz. In no event shall BlueTree's or Aziz's liability exceed the aggregate amount of fees actually received by BlueTree or Aziz under this Engagement.

In no event shall OTE Group, without BlueTree and/or Aziz's prior written consent, settle, compromise, consent to the entry of any judgment in or otherwise seek to terminate any action, suit, proceeding, investigation or claim in respect of which indemnification may be sought hereunder (whether or not BlueTree and/or Aziz is a party thereto) unless such settlement, compromise, consent or termination includes a release of BlueTree and Aziz from any liabilities arising out of such action, suit, proceeding, investigation or claim. This indemnity can only be varied by the mutual agreement of OTE Group, BlueTree and Aziz.

Promptly after receiving notice of any action, suit, proceeding or claim against either of BlueTree or Aziz or receipt of notice of the commencement of any investigation which is based, directly or indirectly, upon any matter in respect of which indemnification may be sought in accordance with the terms hereof from OTE Group, BlueTree and/or Aziz will notify OTE Group in writing of the particulars thereof. The omission to notify OTE Group shall not relieve OTE Group of any liability which OTE Group may have to either of BlueTree and/or Aziz except to the extent such failure materially prejudices OTE Group's rights.

OTE Group also agrees to reimburse BlueTree and/or Aziz for the time spent by BlueTree and/or Aziz in connection with any claim at any time following the end of the engagement at the hourly rate of USD \$1,000.00 plus applicable taxes. BlueTree and Aziz may retain counsel to separately represent it or him in the defence of a claim, which shall be at the expense of OTE Group on a solicitor and its or his own client basis if (i) OTE Group does not assume the defence of a claim, (ii) OTE Group agrees to separate representation or (iii) BlueTree and/or Aziz is advised by legal counsel that there is an actual or potential conflict in OTE Group's, BlueTree's and/or Aziz's respective interests or additional defences are available to BlueTree and/or Aziz which make representation by the same counsel inappropriate.

6. Survival of Terms and Termination

This engagement may be terminated by a written notice to that effect:

- (a) by OTE Group; or
- (b) by BlueTree;

in each case upon not less than ten (10) days' written notice to that effect to the other persons mentioned in this section and to the Monitor provided that the obligations of OTE Group to indemnify BlueTree, to pay any amounts due to BlueTree pursuant to this Engagement, including fees, expenses and tax, and the representations and warranties provided by OTE Group in connection with this Engagement shall survive the completion of the BlueTree engagement hereunder or other termination of this Engagement.

7. Confidentiality

BlueTree will not use confidential information obtained from OTE Group and any of its representatives except in connection with or arising from the services to be provided hereunder and will not disclose such confidential information to any third party or to any of its affiliates, employees or advisors except in connection with or further to the services to be provided hereunder and will not use or make available to OTE Group or any of its representatives confidential information that BlueTree has obtained from any other client or that BlueTree may have developed or obtained in connection with its other activities.

8. Other Activities

Aziz serves as a director of a number of other corporations which are not directly competitive with OTE Group or its affiliates and BlueTree provides services to other clients, including in the role as chief restructuring officer. BlueTree confirms that these other activities will not interfere with the ability of BlueTree or Aziz to provide the services contemplated by this Engagement.

9. Other Matters

This Engagement will enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. This Engagement shall be governed by and construed in accordance the laws of the Province of Ontario and the parties hereby irrevocably attorn to the jurisdiction of the courts of the Province of Ontario. If any provision hereof shall be determined to be invalid or unenforceable in any respect, such determination shall not affect such provision in any other respect or any other provision hereof. Headings are used for convenience of reference only and shall not affect the interpretation hereof.

10. Notices

All notices or other communications under this letter shall be in writing and e-mailed or delivered by personal delivery, if to Company at:

AIRD & BERLIS LLP
Brookfield Place
181 Bay Street , Suite 1800
Toronto, ON
M5J 2T9

Attention: Steve Graff
Email: sgraff@airdberlis.com

and if to BlueTree:

BlueTree Advisors Inc.
32 Shorewood Place
Oakville, ON L6K 3Y4

Attention: William E. Aziz
Email: baziz@bluetreeadvisors.com

or as each party may specify in written notice to the other party. Its notices and communications shall be effective when e-mailed or delivered, as the case may be, or, if such day is not a business day, on the first business day thereafter.

Yours very truly,

BLUETREE ADVISORS INC.

by

William E. Aziz

ORIGINAL TRADERS ENERGY LTD.
Applicant

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

ORDER

LENCZNER SLAGHT LLP

Barristers

130 Adelaide Street West, Suite 2600
Toronto, ON M5H 3P5

Monique J. Jilesen (43092W)

Tel: (416) 865-2926

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Tel: (416) 865-3553

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Tel: (416) 865-6763

Email: bgreenaway@litigate.com

Keely Kinley (84224G)

Tel: (416) 238-7442

Email: kinley@litigate.com

Lawyers for the Respondents, Glenn Page and 2658658
Ontario Inc.

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

B E T W E E N:

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

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

Applicants

AFFIDAVIT OF LAUREN NIXON

I, **LAUREN NIXON**, of the City of Hamilton, in the Province of Ontario, **AFFIRM:**

1. I am a law clerk with the law firm of Lenczner Slaght LLP, lawyers for the Respondents, Glenn Page and 2658658 Ontario Inc. ("**265**"), and, as such, I have knowledge of the matters contained in this Affidavit. Where I based my affidavit on information and belief, I have stated the source of that information and belief and believe it to be true.

The Proposed Motion of the OTE Group

2. On July 17, 2023, Justice Kimmel issued a Stay Extension Order. Attached as **Exhibit "A"** is a copy of the Stay Extension Order.

3. On September 18, 2023, counsel to the Original Traders Energy Ltd. and 2496750 Ontario Inc. (the "**OTE Group**") emailed Lenczner Slaght LLP and advised it intended to use the scheduled October 4 hearing date to seek, among other relief, a sales process and a stay extension (the "**Proposed Motion**").

4. On September 20, 2023, Mr. Page and 265's counsel responded by email and advised that they could not provide a position or raise any concerns until they had an opportunity to review the motion materials. Attached as Exhibit "B" is a copy of this email exchange.
5. On September 28, 2023, counsel to the Monitor delivered the Fifth Report of the Monitor. Attached at Exhibit "C" is a copy of the Fifth Report of the Monitor.
6. The OTE Group delivered its Motion Record and Factum for the Proposed Motion on September 25 and 28, 2023, respectively. Attached at Exhibit "D" is a copy of the service emails of the OTE Group.
7. I am advised by Bonnie Greenaway, a lawyer at Lenczner Slaght LLP, and verily believe that the OTE Group's Proposed Motion has not yet been scheduled.
8. On September 29, Mr. Page and 265's counsel advised that they do not agree that the motion for the sales process be heard on October 4, that they intend to cross-examine Mr. Scott Hill and that they intend to bring a motion for appointment of a Chief Restructuring Officer and related relief.
9. Later that same day, Mr. Page and 265's counsel advised the OTE Group's counsel that they were agreeable to the hearing proceeding virtually and that the hearing should only address the consent order respecting the *Mareva* injunction and scheduling of other motions. Attached at Exhibit "E" is a copy of this email exchange.
10. Afterwards, counsel to the OTE Group advised the Court that an in-person hearing was no longer required as "certain issues had been resolved" and requested an hour of time for a virtual proceeding. Lenczner Slaght LLP responded and advised the OTE Group that they do not agree

that the motion for the sales process be heard on October 4, 2023. Attached at Exhibit “F” is a copy of the email exchange.

11. On September 29, 2023, Lenczner Slaght LLP delivered a Notice of Examination to cross-examine Scott Hill on October 12, 2023. Attached at Exhibit “G” is a copy of the Notice of Examination.

12. Attached at Exhibit “H” are portions of the First Affidavit of Scott Hill sworn on January 27, 2023.

13. Attached as Exhibit “I” is a copy of the *curriculum vitae* of William Aziz of BlueTree Advisors.

14. Attached as Exhibit “J” is a copy of the Engagement Letter of William Aziz of BlueTree Advisors.

AFFIRMED REMOTELY BY LAUREN NIXON stated as being located in the City of Hamilton, in the Province of Ontario before me on October 2, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits
(or as may be)

BONNIE GREENAWAY




(Signature of deponent)

LAUREN NIXON

This is Exhibit "A" referred to in the Affidavit of Lauren Nixon sworn by Lauren Nixon of the City of Hamilton, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on October 2, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

BONNIE GREENAWAY

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

THE HONOURABLE)	MONDAY, THE 17 TH
)	
JUSTICE KIMMEL)	DAY OF JULY, 2023

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

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

STAY EXTENSION ORDER

THIS MOTION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) for an order amending and restating the Initial Order (the “**Initial Order**”) dated January 30, 2023 was heard this day by judicial videoconference via Zoom in Toronto, Ontario.

WHEREAS on March 15, 2023, this Court issued an interim Order in the form of a *Mareva* injunction (the “**Injunctive Order**”) restraining Glenn Page, Mandy Cox and 2658658 Ontario Inc. (the “**Mareva Respondents**”), from selling, removing, dissipating, alienating, transferring, assigning, encumbering, or similarly dealing with the assets identified at Schedule “A” to the Injunctive Order and to this Order (the “**Yacht**”), and certain other relief against third parties who may be in possession of or have records relating to the Yacht.

ON READING the Notice of Motion of the Applicants, the Fourth Report (the “**Fourth Report**”) of KPMG Inc. in its capacity as Court-appointed monitor (the “**Monitor**”), and on hearing the submissions of counsel for the Applicants, OTE Logistics LP and Original Traders Energy LP (collectively, the “**OTE Group**”), counsel for the Monitor and such other counsel who were present as stated on the counsel slip, no one else appearing although duly served as appears from the Affidavit of Service of Samantha Hans sworn July 11, 2023 and filed:

SERVICE

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

STAY EXTENSION

2. **THIS COURT ORDERS** that the Stay Period (as defined in paragraph 16 of the Initial Order) is hereby extended until and including November 3, 2023.

APPROVAL OF MONITOR'S REPORT

3. **THIS COURT ORDERS** that all of the activities and conduct of the Monitor prior to the date hereof in relation to the OTE Group and these CCAA proceedings are hereby ratified and approved.

4. **THIS COURT ORDERS** that the Fourth Report be and is hereby approved.

5. **THIS COURT ORDERS** that only the Monitor, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way the approvals set forth in paragraphs 3 and 4 of this Order.

INSURANCE POLICY

6. **THIS COURT ORDERS** that the Mareva Respondents take the necessary steps to ensure that Original Traders Energy Ltd. ("**OTE Ltd.**") is added as a loss payee on the current insurance policy for the Yacht.

7. **THIS COURT ORDERS** that any additional cost or premium incurred by adding OTE Ltd. as a loss payee on the current insurance policy for the Yacht shall be at the sole expense of OTE Ltd.

GENERAL

8. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

9. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the OTE Group, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the OTE Group and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the OTE Group and the Monitor and their respective agents in carrying out the terms of this Order.

10. **THIS COURT ORDERS** that this Order is effective from today's date as of 12:01 a.m. Eastern Standard/Daylight Time and is enforceable without the need for entry or filing.



Digitally signed by
Jessica Kimmel
Date: 2023.07.19
15:23:42 -04'00'

SCHEDULE "A"**Assets:****COLLATERAL DESCRIPTION**

2022	AZIMUT	S7	XAXS7047F122	MV
2022	VOLVO	PENTA D13-IPS 1050	20132060472	MV
2022	VOLVO	PENTA D13-IPS 1050	20132060504	MV
2022	VOLVO	PENTA D13-IPS 1050	20132060470	MV

COMMON DESCRIPTION

Motor Vehicle / Boat under name "CUZ WE CAN", and all ENGINES, TACKLES, FURNITURE and APPAREL, also may be named as "HOME SOUTH", or any other name that Motor Vehicle / Boat may be changed or assigned under VIN XAXS7047F122, formerly registered under Canada Official Number 844825

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

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceedings commenced at Toronto

SECOND STAY EXTENSION ORDER

AIRD & BERLIS LLP
Barristers and Solicitors
Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

Steven Graff (LSO#: 31871V)
Martin Henderson (LSO#: 24986L)
Tamie Dolny (LSO#: 77958U)
Samantha Hans (LSO#: 84737H)

Lawyers for the OTE Group

This is Exhibit "B" referred to in the Affidavit of Lauren Nixon sworn by Lauren Nixon of the City of Hamilton, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on October 2, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

BONNIE GREENAWAY

From: Monique Jilesen <mjilesen@litigate.com>
Sent: Friday, September 29, 2023 11:56 AM
To: Tamie Dolny <tdolny@airdberlis.com>; Jonathan Chen <jchen@litigate.com>; Keely Kinley <kkinley@litigate.com>; jorkin@goldblattpartners.com; nshelsen@goldblattpartners.com
Cc: Steven L. Graff <sgraff@airdberlis.com>; Martin J. Henderson <mhenderson@airdberlis.com>; Raj Sahni <SahniR@bennettjones.com>; GrayT@bennettjones.com; Van Eyk, Paul <pvaneyk@kpmg.ca>; Lau, Duncan <duncanlau@kpmg.ca>
Subject: RE: October 4 Date - Additional Relief

Hi Tamie –

Having reviewed the motion materials and the report of the Monitor we do not agree that the motion for the sales process be heard on October 4th. We will want to cross-examine Mr. Hill on his affidavit. We are available on October 12th and will deliver a notice of examination unless you wish to discuss an alternate mutually agreeable date.

Separately. We can advise you that we intend to bring a motion for the appointment of a CRO and related relief. We expect to be in a position to deliver that record on Monday.

In addition to addressing the Mareva Order, we can schedule the respective outstanding motions on the 4th. We are in that context agreeable to a short virtual appearance. I should note that I have a potential conflict with Justice Steele – it does not relate to this case and I have no personal or professional connection with her. It relates instead to a family member of Justice Steele. I don't think that this is an issue if it's a scheduling appointment (and it may not be an issue in any event) but I did want to identify it for counsel if there is any concern. I'm happy to speak with any of you about it directly.

Monique

From: Tamie Dolny <tdolny@airdberlis.com>
Sent: Wednesday, September 20, 2023 6:10 PM
To: Jonathan Chen <jchen@litigate.com>; Monique Jilesen <mjilesen@litigate.com>; Keely Kinley <kkinley@litigate.com>; jorkin@goldblattpartners.com; nshelsen@goldblattpartners.com
Cc: Steven L. Graff <sgraff@airdberlis.com>; Martin J. Henderson <mhenderson@airdberlis.com>; Raj Sahni <SahniR@bennettjones.com>; GrayT@bennettjones.com; Van Eyk, Paul <pvaneyk@kpmg.ca>; Lau, Duncan <duncanlau@kpmg.ca>
Subject: Re: October 4 Date - Additional Relief

EXTERNAL MESSAGE

Hi Jon - we intend to serve materials early next week.

Get [Outlook for iOS](#)

From: Jonathan Chen <jchen@litigate.com>
Sent: Wednesday, September 20, 2023 5:58:16 PM
To: Tamie Dolny <tdolny@airdberlis.com>; Monique Jilesen <mjilesen@litigate.com>; Keely Kinley <kkinley@litigate.com>; jorkin@goldblattpartners.com <jorkin@goldblattpartners.com>; nshelsen@goldblattpartners.com <nshelsen@goldblattpartners.com>
Cc: Steven L. Graff <sgraff@airdberlis.com>; Martin J. Henderson <mhenderson@airdberlis.com>; Raj Sahni <SahniR@bennettjones.com>; GrayT@bennettjones.com <GrayT@bennettjones.com>; Van Eyk, Paul <pvaneyk@kpmg.ca>; Lau, Duncan <duncanlau@kpmg.ca>
Subject: RE: October 4 Date - Additional Relief

Hi Tamie,

Thank you for your note.

While we are not necessarily opposed to a sales process, we are unable to provide our position or raise any concerns until we have had an opportunity to review the motion materials.

Do you expect to serve the materials by end of week?

Thanks,

Jon

From: Tamie Dolny <tdolny@airdberlis.com>
Sent: Monday, September 18, 2023 11:23 AM
To: Jonathan Chen <jchen@litigate.com>; Monique Jilesen <mjilesen@litigate.com>; Keely Kinley <kkinley@litigate.com>; jorkin@goldblattpartners.com; nshelsen@goldblattpartners.com
Cc: Steven L. Graff <sgraff@airdberlis.com>; Martin J. Henderson <mhenderson@airdberlis.com>; Raj Sahni <SahniR@bennettjones.com>; GrayT@bennettjones.com; Van Eyk, Paul <pvaneyk@kpmg.ca>; Lau, Duncan <duncanlau@kpmg.ca>
Subject: October 4 Date - Additional Relief

EXTERNAL MESSAGE

All,

Please note that the OTE Group intends to seek approval on the scheduled October 4 date for additional relief related to a stay extension, a sales process over the assets and property of the OTE Group broadly, and a minor amendment to the claims procedure to deal with certain employee claims. We anticipate that this relief will be largely uncontroversial, and is being included for the sake of timing and convenience.

If any of the various impacted parties have concerns over this additional relief being included at that return date, please advise by tomorrow afternoon.

Thanks in advance.

Tamie Dolny
Aird & Berlis LLP

T 647.426.2306

E tdolny@airdberlis.com

This email is intended only for the individual or entity named in the message. Please let us know if you have received this email in error. If you did receive this email in error, the information in this email may be confidential and must not be disclosed to anyone.

This is Exhibit "C" referred to in the Affidavit of Lauren Nixon sworn by Lauren Nixon of the City of Hamilton, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on October 2, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

BONNIE GREENAWAY

ORIGINAL TRADERS ENERGY LTD. ET AL.

**FIFTH REPORT OF KPMG INC.,
IN ITS CAPACITY AS MONITOR**

September 28, 2023

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APPENDICES

APPENDIX “A” – Bid Process Letter

APPENDIX “B” – Revised Cash Flow Forecast

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.**

FIFTH REPORT OF KPMG INC.
In its capacity as Monitor of the OTE Group

September 28, 2023

I. INTRODUCTION

1. On January 30, 2023 (the “**Filing Date**”), Original Traders Energy Ltd. and 2496750 Ontario Inc. (together, the “**Applicants**”) were granted relief under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) by Order (the “**Initial Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”). The relief granted under the Initial Order included a stay of proceedings in favour of the Applicants from January 30, 2023, until February 9, 2023 (the “**Initial Stay**”); the appointment of KPMG Inc. (“**KPMG**”) as the monitor in these proceedings (in such capacity, the “**Monitor**”); and other related relief. These proceedings under the CCAA are referred to herein as the “**CCAA Proceedings**”.
2. OTE Logistics LP (“**OTE Logistics**”) and Original Traders Energy LP (“**OTE LP**”) and together with OTE Logistics, the “**Limited Partnerships**”) are not Applicants in this proceeding. However, the Initial Order extended the same protections granted to the Applicants to the Limited Partnerships, on the grounds that the Limited Partnerships are related to and carry-on operations that are integral to the business of the Applicants. The term “**OTE Group**” throughout this report refers to the Applicants and Limited Partnerships collectively.
3. KPMG, in its capacity at that time as proposed Monitor, filed a report with the Court dated January 30, 2023 (the “**Pre-Filing Report**”) in support of the OTE Group’s application for the Initial Order. Copies of materials filed with the Court and other materials pertaining to the CCAA Proceedings, including all reports issued by the Monitor in these proceedings, are available on the Monitor’s website (<http://home.kpmg/ca/OTEGroup>) (the “**Monitor’s Website**”).
4. On February 9, 2023, the OTE Group was granted additional relief under the CCAA by Order of the Court (the “**Amended and Restated Initial Order**”). The relief granted under the Amended and Restated Initial Order included, among other items:
 - (i) extending the Initial Stay, as defined in the Initial Order, to April 28, 2023;
 - (ii) amending the breadth of the Initial Stay to require regulatory agencies to provide no less than ten (10) days notice if seeking leave of the Court to vary the stay in relation to the possible revocation of licenses; and
 - (iii) increasing the Directors’ Charge to \$2,250,000.

5. The Amended and Restated Initial Order also extended all protections in favour of the Applicants to the Limited Partnerships. The Monitor filed a report with the Court dated February 9, 2023, in connection with the OTE Group’s application for the Amended and Restated Initial Order.
6. On March 15, 2023, the Court granted a Mareva injunction as part of an Order (the “**Injunctive Order**”) which restrained Glenn Page (“**Page**”), Mandy Cox (“**Cox**”) and 2658658 Ontario Inc. (“**265**”, and collectively, the “**Mareva Respondents**”) from selling, removing, dissipating, alienating, transferring, assigning, encumbering or similarly dealing with a seventy foot yacht from the Italian shipbuilder Azimut Benetti, named “Cuz We Can” (the “**Italian Yacht**”), more particularly described in Schedule “A” of the Injunctive Order. On March 21, 2023 and March 28, 2023, the Honourable Justice Osborne granted certain endorsements (collectively, the “**Injunctive Endorsements**”) related to the Injunctive Order. In the Injunctive Endorsements, the Honourable Justice Osborne also noted the Applicants’ intention to commence proceedings pursuant to Chapter 15 of the U.S. Bankruptcy Code in the United States to recognize and enforce orders made by the Ontario Court.
7. On April 28, 2023, the Court made the following Orders:
 - (i) an Order (the “**Information Order**”), among other things, authorizing and directing AirSprint Inc. (“**AirSprint**”) to provide the information requested by the Monitor or its counsel in connection with the Amended and Restated Initial Order and any other Order of this Court, related to: (a) the OTE Group, (b) any of the OTE Group’s directors or officers (together with the OTE Group, the “**OTE Group Affiliates**”), or (c) any third party owned, controlled by, or otherwise related to the OTE Group Affiliates (the “**Information**”), notwithstanding that the Information may include “personal information” as defined in the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5;
 - (ii) an Order (the “**Stay Extension Order**”), among other things, extending the Stay Period (as defined in paragraph 16 of the Initial Order) to August 4, 2023; and
 - (iii) an Order (the “**Claims Procedure Order**”) approving and authorizing the Monitor to conduct a claims procedure (the “**Claims Procedure**”) to call for, assess and determine claims against the OTE Group, and authorizing, directing, and empowering the Monitor to administer the Claims Procedure in accordance with the terms of the Claims Procedure Order.
8. Proceedings under Chapter 15 of the U.S. Bankruptcy Code, 11 U.S.C. §§ 101-1532 (the “**US Bankruptcy Code**”) were also commenced by U.S. counsel to the Monitor. On May 15, 2023, the

United States Bankruptcy Court Southern District of Florida (Fort Lauderdale Division) granted a motion for provisional relief under s. 1519 and 1520 of the US Bankruptcy Code. In connection therewith, the U.S. Court entered an Order for provisional relief to protect assets of the OTE Group and to impose an automatic stay of proceedings in the United States in accordance with the ongoing Canadian proceedings.

9. On May 31, 2023, the United States Bankruptcy Court Southern District of Florida (West Palm Beach Division) granted an Order recognizing the Canadian proceedings as a “foreign main proceeding” within the meaning of 11 U.S.C. § 1502 of the U.S. Bankruptcy Code, and granted certain other relief, including recognizing the Initial Order, the Amended and Restated Initial Order, and the Injunctive Order. The aforementioned Orders are available on the Monitor’s Website.
10. On July 17, 2023, the Court made the following Orders:
 - (i) an Order (the “**Second Stay Extension Order**”), among other things, extending the Stay Period (as defined in paragraph 16 of the Initial Order) to November 3, 2023; and
 - (ii) an Order (the “**Yacht Sale and AirSprint Proceeds Order**”) authorizing and directing the Monitor to conduct a sales process for the Italian Yacht (“**Yacht Sale Process**”) and directing AirSprint to remit to the Monitor any funds, proceeds of sale or use of any aircraft or fractional ownership or other interests therein in which the OTE Group has claimed an interest (the “**OTE Claimed AirSprint Property**”).

II. PURPOSE OF REPORT

11. The purpose of the Fifth Report of the Monitor (the “**Fifth Report**”) is to provide information and the Monitor’s conclusions and/or recommendations to the Court pertaining to:
 - (i) the activities of the OTE Group and the Monitor since the Monitor’s report dated July 12, 2023 (the “**Fourth Report**”);
 - (ii) the OTE Group’s reported receipts and disbursements for the period of July 3, 2023, to September 17, 2023, including a comparison of reported to forecasted results;
 - (iii) the OTE Group’s motion for an order (the “**Third Stay Extension Order**”), among other things:
 - (a) extending the Stay Period to April 26, 2024;

- (b) amending the claim procedure approved pursuant to the Claims Procedure Order (term as defined below, the “**Claims Procedure**”) to enable the OTE Group, with the assistance of the Monitor to identify, quantify and resolve certain claims by former employees terminated during the CCAA Proceedings;
 - (c) approving a sales process (the “**Bid Process**”) for the business and property of the OTE Group, to be carried out by the Monitor, as set out in Appendix “A” herein, excluding the assets identified at Schedule “A” to the Injunctive Order; and
 - (d) approving the Fifth Report and the activities and conduct of the Monitor in relation to the OTE Group and the CCAA Proceedings;
- (iv) the review of the security held by the Royal Bank of Canada (“**RBC**”), completed by the Monitor’s counsel at the request of the Monitor;
 - (v) the Reduced Operations Plan (as defined below), to significantly reduce operating costs and conserve cash, due to the unexpected loss of key customers and operational and financial difficulties faced by the OTE Group;
 - (vi) the Monitor’s asset tracing and recovery activities, including: (a) an update on the Yacht Sale Process; and (b) sending the AirSprint Letters (as defined herein) for the purposes of obtaining further details on use of the OTE Claimed AirSprint Property; and
 - (vii) the Monitor’s review of historical bank statements to establish a more complete set of books and records and in furtherance of its investigatory powers pursuant to the Initial Order.

III. TERMS OF REFERENCE

12. In preparing the Fifth Report, the Monitor has relied solely on information and documents provided by the OTE Group and their advisors, including unaudited financial information, declarations, in addition to information and documents from third parties that responded to the Monitor’s Information Request Letters, which are defined herein (collectively, the “**Information Received**”). In accordance with industry practice, except as otherwise described in the Second Report (as defined herein), KPMG has reviewed the Information Received for reasonableness, internal consistency and use in the context in which it was provided. However, the Monitor has not audited or otherwise attempted to verify the accuracy or completeness of the Information Received in a manner that would wholly or partially comply with Generally Accepted Auditing Standards (“**GAAS**”) pursuant to the *Chartered*

Professional Accountants of Canada Handbook and, accordingly, the Monitor expresses no opinion or other form of assurance contemplated under GAAS in respect of the Information Received.

13. Unless otherwise stated, all monetary amounts noted herein are expressed in Canadian dollars.

IV. BACKGROUND

14. Detailed information with respect to the OTE Group's business, operations, products and causes of insolvency is provided in the Affidavit of Scott Hill sworn January 27, 2023 (the "**Hill Affidavit**") and the Pre-Filing Report.
15. As described in the Pre-Filing Report and the Hill Affidavit, at the time of the application for the Initial Order, the OTE Group was missing a significant amount of its business and financial records, and property and funds of the OTE Group are alleged to have been misappropriated. Accordingly, the Monitor was granted expanded investigatory powers in the Initial Order and the Amended and Restated Initial Order.

V. ACTIVITIES OF THE OTE GROUP

16. The OTE Group's activities since the Fourth Report have included:
 - (i) attending Court via videoconference for the hearing of its motion in respect of the Second Stay Extension Order and the Yacht Sale and AirSprint Proceeds Order;
 - (ii) corresponding with the Monitor and the OTE Group's legal counsel on changes impacting the OTE Group's business and the resulting financial challenges;
 - (iii) continuing to manage the business of the OTE Group in the ordinary course in accordance with the Amended and Restated Initial Order;
 - (iv) managing relationships with key stakeholders, including RBC, employees, customers, and suppliers in coordination with the Monitor;
 - (v) working with the Monitor to implement procedures to monitor cash flows and corresponding with the Monitor related to its review of payments;
 - (vi) managing cash flows and making payments in accordance with the Amended and Restated Initial Order;

- (vii) working with the Monitor to trace, investigate and review missing books and records of the OTE Group;
- (viii) developing cash flow forecast extensions, including the extended cash flow forecast for the period September 18, 2023 to April 26, 2024 (the “**Third Extended Cash Flow Forecast**”), in coordination with the Monitor;
- (ix) corresponding with the Monitor and the OTE Group’s legal counsel on lease disclaimers pursuant to paragraph 10 of the Amended and Restated Initial Order; and
- (x) corresponding with the Monitor and the OTE Group’s legal counsel on various matters pertaining to the CCAA Proceedings, including the Claims Procedure, the Reduced Operations Plan and the Bid Process.

VI. ACTIVITIES OF THE MONITOR

17. The Monitor, with the support of its legal advisors, has been working with the OTE Group with respect to the following activities since the Fourth Report:
- (i) attending Court via videoconference for the hearing of the OTE Group’s motion in respect of the Second Stay Extension Order and the Yacht Sale and AirSprint Proceeds Order;
 - (ii) working with the OTE Group to assess the challenges facing the OTE Group’s business which resulted in the Reduced Operations Plan;
 - (iii) maintaining the Monitor’s Website where all court materials and other relevant documents pertaining to the CCAA Proceedings are available in electronic form;
 - (iv) supporting the OTE Group in managing relationships with key stakeholders, including employees and suppliers;
 - (v) working with the OTE Group to implement procedures to monitor cash flows and making payments in accordance with the Initial Order and the Amended and Restated Initial Order;
 - (vi) responding to enquiries from and engaging in calls with creditors, governmental authorities, including the Canada Revenue Agency and the Ministry of Finance for Ontario, and other stakeholders in connection with these CCAA Proceedings;

- (vii) assisting the OTE Group in developing cash flow forecast extensions, including the Third Extended Cash Flow Forecast;
 - (viii) corresponding with the Monitor’s legal counsel with respect to its review of security granted to RBC by the Limited Partnerships;
 - (ix) progressing the sale process for the Yacht Sale Process;
 - (x) reviewing and approving lease disclaimers pursuant to paragraph 10 of the Amended and Restated Initial Order;
 - (xi) preparing and sending the AirSprint Letters for the purposes of obtain additional information with respect to the use of OTE Claimed AirSprint Property;
 - (xii) corresponding with the OTE Group, its legal counsel, and the Monitor’s legal counsel on various matters pertaining to the CCAA Proceedings, including the relief sought at this motion;
 - (xiii) reviewing materials filed with the Court in respect of the CCAA Proceedings;
 - (xiv) attending to matters in respect of the Claims Procedure, as discussed further below; and
 - (xv) preparing this Fifth Report.
18. The Monitor believes that its activities were reasonable and conducted in the best interests of the OTE Group and its stakeholders, and therefore should be approved.

VII. SECURITY REVIEW

19. The Monitor instructed its independent counsel, Bennett Jones LLP (“**Bennett Jones**”), to provide an opinion (the “**Security Opinion**”) on the validity and enforceability of security granted by the Limited Partnerships (referred to as the “**Debtors**” herein) to RBC as lender under various credit facilities agreements (the “**Loan Documents**”) and security documents (the “**Security Documents**”) executed at various points in 2021 and 2022.
20. Based on Bennett Jones’ review of the Loan Documents, the Security Documents and the results of certain public registration searches, and subject to the customary assumptions and qualifications which are set out in the Security Opinion, Bennett Jones has opined that:

- (i) the Security Documents constitute valid and binding obligations of the Debtors noted as parties to the Security Documents, enforceable against such Debtors in accordance with the terms thereof;
- (ii) Security Documents created in favour of RBC are valid security interests in the properties, assets, interests, and rights of the Debtors (the “**Charged Property**”) described in the Security Documents to which the *Personal Property Security Act* (Ontario) (the “**PPSA**”) applies; and
- (iii) as of the applicable dates of the PPSA searches, registration has been made in all public offices in Ontario provided for under applicable law where such registration is necessary to preserve, protect and perfect the security interests in the Charged Property of the OTE Group to which the PPSA applies, as created by the Security Documents.

VIII. BUSINESS UPDATE

- 21. The OTE Group operates in a highly competitive industry that is based on high sales volume, low profit margins and a low-cost structure.
- 22. Since the commencement of the CCAA proceedings, the OTE Group has faced a variety of challenges, including, in particular, aggressive customer pricing from competitors and reduced vendor terms. These challenges have negatively impacted the OTE Group’s sales volumes and financial condition.
- 23. In response, the OTE Group implemented several initiatives in an effort to mitigate the financial impact of these challenges. Key initiatives have included price increases, discontinuing fuel blending activities and other cost reduction activities.
- 24. Subsequent to the Fourth Report, the OTE Group became aware of the departure of certain key customers. The OTE Group does not anticipate being able to replace the lost sales volumes attributable to these customers in the current circumstances of its restructuring. As a result, the OTE Group, with the assistance of the Monitor, reviewed additional mitigation strategies and scenarios. Consequently, the OTE Group, with the assistance of the Monitor, has prepared a plan to significantly reduce the operations of the OTE Group (the “**Reduced Operations Plan**”) in order to reduce the operating costs and conserve cash, as a result of the challenges stated above.
- 25. At the commencement of the CCAA Proceedings, the OTE Group had three blending locations: Tyendinaga, Whitefish, and Six Nations. As at the date of the report, in order to save costs and streamline operations, the Reduced Operations Plan has commenced and operations at the Tyendinaga

blending location and Whitefish blending location (collectively, the “**Discontinued Locations**”) have been discontinued. In connection therewith, all employees employed at the Discontinued Locations have been terminated. Further, any assets, with the exception of any blending equipment and any assets that are not movable, have been transferred from the Discontinued Locations to the Six Nations blending location.

26. Operations at the Six Nations blending location will continue, and all remaining OTE Group customers will be serviced from the Six Nations location for the time being, subject to the Reduced Operations Plan. In connection with the Reduced Operations Plan, the OTE Group, with assistance of the Monitor, will undertake a Bid Process, as further discussed below.
27. As discussed in the Fourth Report, the Monitor was working with the OTE Group and the Ministry of Finance on an agreement that extended certain time limited gas licenses and fuel licences until December 31, 2023. Subsequently, an extension of the aforementioned licenses to December 31, 2023 was granted by the Ministry of Finance. In light of the Reduced Operations Plan and the proposed Bid Process, the OTE Group does not currently intend to seek further extensions of the gas licenses and fuel licenses beyond December 31, 2023.
28. In addition to carrying out the Bid Process to try and find one or more buyers for the business and/or assets of the OTE Group, the Monitor will continue with its investigative and asset recovery efforts pursuant to the powers granted to the Monitor by the Court and the CCAA, in order to try and achieve recoveries for the OTE Group's creditors.

IX. CASH RECEIPTS AND DISBURSEMENTS – JULY 3, 2023 TO SEPTEMBER 17, 2023

29. As noted in the Fourth Report, the OTE Group, in consultation with the Monitor, prepared an extended cash flow forecast (the “**Extended Cash Flow Forecast**”) for the period from July 3, 2023, to November 5, 2023, in support of the requested stay extension, representing a forecast of the OTE Group’s projected receipts and disbursements during that time period. The OTE Group continues to co-operate with the Monitor and provide access to their books and records and disbursements on a weekly basis, and has prepared a forecast-to-actual variance analysis regarding the OTE Group’s receipts and disbursements.
30. A comparison of the Extended Cash Flow Forecast to actual results for the 10-week period from July 3, 2023, to September 17, 2023 (the “**Comparison Period**”) is summarized as follows:

Original Traders Energy			
Summary of Actual Receipts and Disbursements			
<i>For the 10-week period from July 3, 2023 - September 17, 2023</i>			
In C\$; unaudited			
	Actual	Forecast	Variance Fav/(Unfav)
Receipts			
Customer collections	54,283,720	63,054,030	(8,770,310)
Tax refunds	10,111,946	2,759,577	7,352,369
Total receipts	64,395,666	65,813,607	(1,417,941)
Operating disbursements			
Purchases	42,399,552	49,944,365	7,544,813
Pre-filing payments/deposits	-	215,000	215,000
Operating expense	1,454,391	3,590,510	2,136,119
Rent and royalties	85,834	85,886	52
Payroll	833,711	949,389	115,678
Professional fees	445,497	750,000	304,503
Tax remittances	15,072,437	13,810,097	(1,262,340)
Bank payments	369,529	254,776	(114,753)
Total operating disbursements	60,660,951	69,600,023	8,939,072
Foreign Exchange	55,400	-	55,400
Net cash flow	3,790,115	(3,786,416)	7,576,531
Opening cash	10,076,418	10,076,418	-
Net cash flow	3,790,115	(3,786,416)	7,576,531
Ending cash	13,866,533	6,290,002	7,576,531

Note: "Fav/(unfav)" denotes favourable or unfavourable variances against forecast.

31. As shown in the above table, the OTE Group reported a net cash inflow of approximately \$3.8 million over the Comparison Period resulting in a favourable cash flow variance of approximately \$7.6 million as compared to the Extended Cash Flow Forecast for the same period.
32. The favourable cash flow variance of \$7.6 million is principally the result of the following:
- (i) *Timing Differences:* tax refunds during the Comparison Period were \$7.4 million higher than expected. This was offset by a \$1.3 million unfavourable cash flow variance related to the timing differences of tax remittances; and
 - (ii) *Lower Sales Volume:* sales volume for the OTE Group was lower than forecast which resulted in customer collections being lower by \$8.8 million. However, disbursements related to purchases, operating expenses, payroll and professional fees were collectively lower than forecast by \$10.1 million.

33. As a result of the net impact of the above two items, the ending cash balance is higher than forecasted, however, this is a temporary positive variance due to favourable timing of the tax refunds.

X. PROPOSED BID PROCESS

34. The Monitor notes that, to date, no active marketing of the OTE Group and/or its assets has been undertaken during the CCAA Proceedings. In light of the loss of key customers and the shift to the Reduced Operations Plan, as noted above, the OTE Group, in consultation with the Monitor, has determined that a process to try and sell the business and assets of the OTE Group is the most prudent and reasonable course of action in the circumstances to try and maximize recoveries for the OTE Group's creditors. Accordingly, the Bid Process has been developed as a means of gauging interest in the OTE Group and/or its assets and determining whether a transaction that would result in greater than liquidation value is available for the property, assets and undertakings of the OTE Group (collectively, the “**Property**”).
35. The Property available under this process would also include the blending equipment located at the Discontinued Locations, as well as any assets that have been transferred to Six Nations as part of the Reduced Operations Plan.
36. The purpose of the Bid Process is to identify one or more purchasers for all or part of the Property of the OTE Group. In order to provide third parties with an opportunity to bid on the Property, the Monitor proposes to market the OTE Group and/or its assets to third parties for a period of approximately 35 days.
37. Any sale of the assets or the business of the OTE Group will be on an “as is, where is” basis, without surviving representations or warranties of any kind, nature, or description by the OTE Group, the Monitor or any of their respective agents, advisors or estates, and, in the event of a sale, all of the right, title and interest of the OTE Group in and to the Property to be acquired will be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options, and interests therein and thereon pursuant to Court orders, except as otherwise provided in such Court orders.
38. The key aspects of the Bid Process are as follows:
- (i) On or about October 5, 2023, an initial offering summary (the “**Teaser Letter**”), a bid process letter (the “**Bid Process Letter**”) and form of non-disclosure letter (the “**NDA**”) prepared by counsel to the Monitor and counsel to the OTE Group will be sent to a list of potential interested

parties (the “**Interested Parties**”) by the Monitor, which list has been developed by the Monitor and the OTE Group;

- (ii) The Monitor will cause a notice of the Bid Process (and such other relevant information which the Monitor, in consultation with the OTE Group, considers appropriate) (the “**Notice**”) to be published in The Globe and Mail (National Edition);
 - (iii) Interested Parties will be required to sign the NDA prior to obtaining information to assist with their evaluation of the OTE Group’s assets;
 - (iv) The Monitor will establish an electronic data room (the “**Data Room**”) to provide Interested Parties with access to relevant information relating to the OTE Group;
 - (v) Interested Parties that wish to view and inspect the OTE Group’s assets will be required to schedule an appointment with the Monitor;
 - (vi) Interested Parties will be required to submit binding offers (the “**Binding Offers**”) to the Monitor by 5 pm Eastern Standard Time on November 10, 2023 (the “**Bid Deadline**”). Interested parties may submit a Binding Offer for all the OTE Group’s Property or a subset of same;
 - (vii) The acceptability of any Binding Offers received is to be determined by the Monitor, in consultation with the OTE Group, and subject to any confidentiality restrictions considered appropriate by the Monitor; and
 - (viii) If there are Binding Offers that are acceptable to both the Monitor and the OTE Group, they will be presented to this Court for final approval, with the closing of the sale to occur as soon as possible after all approvals are received.
39. The Monitor notes that the proposed Bid Process timeframe is condensed. However, the Monitor believes that the deadlines proposed in the Bid Process are reasonable and balance the search for a prospective purchaser with the costs associated with administering a sales process of this nature in light of the challenges facing the OTE Group. The Monitor will report back to this Court if facts or circumstances require the OTE Group or the Monitor to re-evaluate the time periods or the Bid Process based on facts or circumstances at that time.
40. Additional aspects of the Bid Process are as follows:

- (i) The Monitor may amend any timelines and make any minor amendments it deems necessary or advisable to the Bid Process to help ensure the fairness, integrity and efficacy of the Bid Process;
 - (ii) Any transaction will be subject to Court approval;
 - (iii) In order to facilitate due diligence or maximize participation by Interested Parties in the Bid Process, the Monitor will have the right to extend any of the timelines in the Bid Process, provided that the OTE Group does not object to any extension of timeline; and
 - (iv) The Monitor has the right to reject any and all Binding Offers, including the highest dollar value Binding Offer(s), acting commercially reasonably.
41. The Monitor recommends that this Court issue the Third Stay Extension Order, which includes relief approving this Bid Process, for the following reasons:
- (i) The Bid Process is a fair, open and transparent process intended to canvass the market broadly on an orderly basis;
 - (ii) There will be no delay in commencing the Bid Process, such that the process can be conducted in a timely nature for stakeholders;
 - (iii) The duration of the Bid Process is sufficient to allow Interested Parties to participate and to submit an offer on or before a reasonable timeline; and
 - (iv) The OTE Group has assisted the Monitor in designing the Bid Process' framework, to best maximize value for the OTE Group's creditors.

XI. EMPLOYEE CLAIMS

42. As discussed previously, the Monitor was authorized by the Court to conduct a Claims Procedure to call for, assess and determine claims against the OTE Group. Accordingly, the Monitor, with the assistance of the OTE Group, carried out the Claims Procedure in accordance with the Claims Procedure Order. The claims bar date was June 27, 2023.
43. As a result of the Discontinued Locations, OTE terminated some employees and it is anticipated that further terminations of employees will be required as a result of the Reduced Operations Plan, unless a going-concern buyer who is willing to retain the employees can be found in the Bid Process. As the

termination of employees may result in Restructuring Claims for employees, the Monitor proposes an adjustment to the Claims Procedure to include any employees of OTE Group terminated during the CCAA Proceedings (the “**Terminated Employees**”) to enable Terminated Employees to assert claims resulting from their termination (e.g. for termination pay, severance pay, wages, vacation pay, commissions or other remuneration arising as a result of the termination of their respective employment).

44. In order to simplify the administration of the Claims Procedure, Terminated Employees will not be required to file proof of claim forms with respect to their claims (the “**Employee Restructuring Claims**”). Rather, the OTE Group will prepare, in consultation with the Monitor, and based on the OTE Group’s books and records, a notice of Employee Restructuring Claim, setting out the classification, nature and amount of each Employee Restructuring Claim. The Monitor will deliver such notice (the “**Notice of Employee Restructuring Claim**”), along with a claims package (the “**Claims Package**”), to each Terminated Employee as soon as reasonably practicable and not later than fifteen business days following the date of the Third Stay Extension Order in respect of each Terminated Employee who was terminated prior to the date of this Order or within fifteen business days following the date on which such Employee Restructuring Claim arises in respect of any Terminated Employee who is terminated following the date of the Third Stay Extension Order.
45. If a Terminated Employee disputes the classification, nature and/or amount of the Employee Restructuring Claim, as set out in their Notice of Employee Restructuring Claim, such Terminated Employee must complete a notice of dispute (the “**Notice of Dispute of Employee Restructuring Claim**”) and send it to the Monitor by no later than 5 pm Eastern Standard Time on the date that is fifteen business days after the date on which the Monitor sent a Claims Package, accompanied by a Notice of Employee Restructuring Claim, to such Terminated Employee having an Employee Restructuring Claim (the “**Employee Claims Bar Date**”).
46. Any Terminated Employee who does not deliver a Notice of Dispute of Employee Restructuring Claim such that it is received by the Monitor by the Employee Claims Bar Date shall be deemed to accept as final and binding the amount of its Claim as set out in the Notice of Employee Restructuring Claim and will be forever barred, estopped and enjoined from disputing the classification, nature and/or amount of the Employee Restructuring Claim set forth in the Notice of Employee Restructuring Claim, and any other claims that such Terminated Employee may have in respect of, arising from or related to such Terminated Employee’s employment or former employment with any of the OTE Group entities.

47. The Monitor is of the view that the Employee Restructuring Claim process and the prescribed timelines are reasonable in that they provide sufficient time for Terminated Employees to evaluate, accept or dispute any Employee Restructuring Claim that any Employee may have against the OTE Group or its Directors and Officers.
48. The Monitor recommends this amendment to the Claims Procedure Order, as it further understands from its counsel that the Employee Restructuring Claim mechanism designed above is structured to mirror “negative notice” employee Claims Procedure that are regularly granted by this Court in other CCAA filings.

XII. OTE GROUP’S REQUEST TO EXTEND STAY PERIOD TO APRIL 26, 2024

49. The current Stay Period expires on November 3, 2023. The OTE Group is seeking an extension of the Stay Period to April 26, 2024, to, among other things, advance the Reduced Operations Plan as well as the Bid Process.
50. In support of the stay extension, the OTE Group, with the assistance of the Monitor, has prepared the Third Extended Cash Flow Forecast, a copy of which is attached hereto as Appendix “B” (along with reports of both management and the Monitor on the Third Extended Cash Flow Forecast). The Third Extended Cash Flow Forecast is summarized below:

Original Traders Energy	
Third Extended Cash Flow Forecast	
For the 32-week period from September 18, 2023 - April 28, 2024	
In C\$; unaudited	Total
Receipts	
Customer collections	63,000,000
Tax refunds	-
Total receipts	63,000,000
Operating disbursements	
Purchases	44,000,000
Pre-filing payments/deposits	-
Operating expense	6,000,000
Rent and royalties	200,000
Payroll	795,000
Professional fees	2,205,000
Tax remittances	14,000,000
Bank payments	938,715
Total operating disbursements	68,138,715
Net cash flow	(5,138,715)
Opening cash	13,866,533
Net cash flow	(5,138,715)
Ending cash	8,727,818

51. The Third Extended Cash Flow Forecast indicates that the OTE Group will have sufficient liquidity to fund both operating costs and the costs of the CCAA Proceedings during the extension of the Stay Period, if granted.
52. The Monitor is of the view that the extension of the Stay Period is appropriate in the circumstances. The Monitor supports the OTE Group's request for an extension of the Stay Period to April 26, 2024, for the following reasons:
- (i) the OTE Group has, to the knowledge of the Monitor, acted and continues to act in good faith and with due diligence;
 - (ii) the extension will provide the time necessary for the OTE Group to: (a) assess the claims that are submitted or may be submitted as part of the Claims Procedure Order; (b) advance the Reduced Operations Plan with the assistance of the Monitor; and (c) progress the Bid Process; and

- (iii) the extension should not materially prejudice any creditor, as the OTE Group is projected to have sufficient funds through its continuing operations to pay post-filing services and supplies, as contemplated in the Third Extended Cash Flow Forecast.

XIII. ITALIAN YACHT UPDATE

- 53. Pursuant to the Yacht Sale and AirSprint Proceeds Order, the Monitor commenced the Yacht Sale Process. As discussed in the Fourth Report, the Monitor was to select one or more boat dealers or brokers (the “**Boat Broker**”) in Florida to market the Italian Yacht for sale.
- 54. On August 21, 2023, the Monitor provided the Mareva Respondents with a summary of four proposed Boat Brokers with a recommendation for one of the four Boat Brokers (the “**Recommended Boat Broker**”) headquartered in Florida, USA, for reasons of, among others, relatively lower storage and operating costs quoted. The Monitor has not yet formally engaged the Recommended Boat Broker because upon commencement of the search for same, the Monitor was made aware of certain legal issues, particularly with respect to unpaid duties, surrounding the Italian Yacht that would prohibit the sale of same in Florida, USA.
- 55. The Monitor’s investigation regarding the legal issues surrounding the planned sale of the Italian Yacht remains ongoing at the time of this report.
- 56. The Monitor’s selection of the Boat Broker was also dependent on the arrangement of insurance for the Italian Yacht. Shortly before the date of this Fifth Report, the Monitor successfully placed alternate insurance coverage for the Italian Yacht. In the Monitor’s view, the insurance previously in place was not satisfactory in providing adequate coverage that protects the OTE Group against potential loss or damage to the Italian Yacht.

XIV. AIRSPRINT LETTER

- 57. As discussed in the Fourth Report, on April 28, 2023, the Court issued the Information Order authorizing and directing AirSprint to provide to the Monitor or its counsel any requested information relating to the OTE Group, the OTE Group Affiliates (as defined in the Information Order) or any third party owned, controlled by, or otherwise related to the OTE Group Affiliates.
- 58. Pursuant to the Information Order and in cooperation with the Monitor, AirSprint provided certain information to the Monitor. This information included flight manifests identifying the individuals

who travelled with the OTE Claimed Airsprint Property (the "**Flight Manifest**") between April 20, 2021 to February 23, 2023 (the "**Review Period**").

59. The Monitor reviewed the Flight Manifest and identified persons who traveled on OTE Claimed AirSprint Property during the Review Period. On or about September 15, 2023, the Monitor sent letters (the "**AirSprint Letters**") to certain persons to allow the Monitor to obtain further information relating to the use of the OTE Claimed AirSprint Property, particularly with respect to the nature of each trip taken whether personal or business related. The Monitor will seek reimbursement for any travel determined to be in relation to personal matters.
60. The recipients of the AirSprint Letters have been provided a deadline of fourteen (14) days from the date of the letter to provide a response. Should a response not be received from an individual by this date, the Monitor will assume that all travel associated with that individual was personal in nature and will seek reimbursement.

XV. HISTORICAL TRANSACTIONS REVIEW

61. As described in the second report of the Monitor (the "**Second Report**"), in connection with its investigatory powers, the Monitor sent letters (the "**Information Request Letters**") to certain parties (collectively, the "**Requested Parties**") who may have been in possession, custody or control of any books, records, accountings, documents, correspondences or papers, electronically stored or otherwise, relating to the OTE Group (the "**Requested Information**").
62. The Monitor, with the assistance of the OTE Group, is currently in the process of reviewing the limited Requested Information received from Requested Parties, along with the historical bank statements of OTE Group, to identify any further gaps in the books and records of the OTE Group for the purposes of establishing a more complete set of same (the "**Historical Transactions Review**").
63. As at the date of this report, the Historical Transactions Review is ongoing. The Monitor intends to attend this Court at a later date to report more fully on the status of the Monitor's Historical Transactions Review.

XVI. MONITOR'S RECOMMENDATIONS

64. For the reasons set out in this Fifth Report, the Monitor is of the view that the Bid Process is reasonable in the circumstances, balances the search for a prospective purchaser with the costs associated with

administering a sales process of this nature, and should provide Interested Parties with sufficient time to value the company and to make an offer in respect of the business and/or its assets.

65. Based on the foregoing, the Monitor respectfully recommends that this Court approve the relief sought in the Third Stay Extension Order.

All of which is respectfully submitted this 28th day of September 2023.

KPMG Inc.
In its capacity as Monitor of
Original Traders Energy Group
And not in its personal or corporate capacity

Per:



Paul van Eyk
CPA, CA-IFA, CIRP, LIT, Fellow of INSOL
President



Duncan Lau
CPA, CMA, CIRP
Senior Vice President

APPENDIX “A”

BID PROCESS

On January 30, 2023, the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) issued an order (the “**Initial Order**”) providing certain relief pursuant to the *Companies' Creditors Arrangement Act* (the “**CCAA**”, and these proceedings, the “**CCAA Proceedings**”), including a stay of proceedings against Original Traders Energy Ltd., 2496750 Ontario Inc., OTE Logistics LP, and Original Traders Energy LP (collectively, the “**OTE Group**”). The Initial Order also appointed KPMG Inc. as monitor of the OTE Group (in such capacity, the “**Monitor**”). On February 9, 2023, the OTE Group was granted additional relief under the CCAA by Order of the Court (the “**ARIO**”). These CCAA Proceedings are ongoing.

Pursuant to an order dated October 4, 2023 (the “**Bid Process Order**”), the Court approved, among other things, the sale process described herein (the “**Bid Process**”). The Monitor, with the assistance of the OTE Group, shall conduct the Bid Process as provided below.

Capitalized terms used in this Bid Process and not otherwise defined herein have the meanings given to them in the fifth report of the Monitor (the “**Fifth Report**”).

Opportunity

1. The Bid Process is intended to solicit interest in and opportunities for the property, assets and undertakings of the OTE Group, excluding the assets identified at Schedule “A” to the injunctive order dated March 15, 2023 (collectively, the “**Property**”).
2. Any sale of the Property will be on an “as is, where is” basis, without surviving representations or warranties of any kind, nature, or description by the Monitor, the OTE Group, or any of their respective agents, advisors or estates, and, in the event of a sale, all of the right, title and interest of the OTE Group in and to the Property to be acquired will be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options, and interests therein and thereon pursuant to Court orders, except as otherwise provided in such Court orders.

Key Dates

3. The following are the key dates of the Bid Process:

Milestone	Date
Commence solicitation of interest from parties	No later than October 5, 2023.
Binding Offer Deadline	November 10, 2023, at 5:00 p.m. EST.
Deadline to notify Qualified Bidders of Successful Bid	November 16, 2023, at 5:00 p.m. EST.

Solicitation of Interest: Notice of Bid Process

4. As soon as reasonably practical, but no later than October 5, 2023:
 - a. the Monitor, with the assistance of the OTE Group, will prepare a list of parties that have expressed interest in the Opportunity, or that the Monitor believes may have an interest in the Opportunity (the “**Interested Parties**”);
 - b. the Monitor, with the assistance of the OTE Group, will prepare a process summary (the “**Teaser Letter**”) describing the Opportunity, outlining the Bid Process and inviting recipients of the Teaser Letter to express their interest pursuant in the Bid Process;
 - c. the OTE Group, with the assistance of the Monitor, will prepare a non-disclosure agreement in form and substance satisfactory the OTE Group and the Monitor (an “**NDA**”);
 - d. the Monitor will cause a notice of the Bid Process (and such other relevant information which the Monitor, in consultation with the OTE Group, considers appropriate) (the “**Notice**”) to be published in *The Globe and Mail* (National Edition).
5. The Monitor will send the Teaser Letter and NDA to all Known Potential Bidders by no later than October 5, 2023 and to any other party who requests a copy of the Teaser Letter and NDA.

Due Diligence

6. Any party that wishes to participate in the Bid Process (a “**Potential Bidder**”) must provide to the Monitor at the addresses specified in Schedule “A” hereto (including by email transmission), with an NDA executed by it, acceptable to the Monitor, in consultation with the OTE Group, and written confirmation of the identity of the Potential Bidder, the contact information for such Potential Bidder and full disclosure of the direct and indirect principals of the Potential Bidder.
7. A Potential Bidder (who has delivered the executed NDA and letter as set out above) will be deemed a “**Qualified Bidder**” if the Monitor, in consultation with the OTE Group, determines such person is likely, based on the availability of financing, experience and other considerations, to be able to consummate a sale or investment pursuant to the Bid Process. All Qualified Bidders will be granted access to a virtual data room (the “**Data Room**”).
8. At any time during the Bid Process, the Monitor may, in its reasonable business judgement, eliminate a Qualified Bidder from the Bid Process.
9. Potential Bidders must rely solely on their own independent review, diligence, investigation and/or inspection of all information and of the Property in connection with their participation in the Bid Process and any transaction they enter into with one or more of the OTE Group entities.

10. The Monitor, in consultation with the OTE Group, shall, subject to competitive and other business considerations, afford each Qualified Bidder such access to due diligence materials and information relating to the Property as the Monitor, in consultation with the OTE Group, may deem appropriate. The Monitor may also, in consultation with the OTE Group, limit the access of any Qualified Bidder to any confidential information in the Data Room if the Monitor, in consultation with the OTE Group, reasonably determines that such access could negatively impact the Bid Process, the ability to maintain the confidentiality of the information, the Property or its value.
11. Qualified Bidders that wish to view and inspect the OTE Group's assets in person must schedule an appointment with the Monitor.

Binding Offers

12. Qualified Bidders that wish to make a formal offer to purchase or make an investment in the OTE or their Property or any part thereof shall submit a binding offer (a "**Binding Offer**") that complies with all of the following requirements to the Monitor at the addresses specified in Schedule "A" hereto (including by email), so as to be received by them no later 5 p.m. EST on November 10, 2023 (the "**Bid Deadline**"). For greater certainty, Binding Offers must:
 - (a) be submitted on or before the Bid Deadline by a Qualified Bidder;
 - (b) be made by way of binding, definitive transaction document(s) that is/are executed by the Qualified Bidder;
 - (c) includes an acknowledgement by the Qualified Bidder: (i) that it has had an opportunity to conduct any and all due diligence prior to making the Binding Offer; (ii) that it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Property in making its Binding Offer; and (iii) that it did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever, whether express, implied, statutory or otherwise, regarding the Property or the completeness of any information provided in connection therewith, other than as expressly set forth in the Binding Offer or other transaction document submitted with the Binding Offer;
 - (d) does not provide for any break or termination fee, expense reimbursement or similar type of payment, it being understood and agreed that no bidder will be entitled to any bid protections;
 - (e) contain a clear indication of whether the Qualified Bidder is offering to: (i) acquire all, substantially all or a portion of the Property (a "**Binding Sale Offer**"); or (ii) make an investment in, restructure, reorganize or refinance the Property and/or one or more of the OTE Group (a "**Binding Investment Offer**"), on terms and conditions reasonably acceptable to the Monitor and to the OTE Group;
 - (f) provide proof of funds acceptable to the Monitor, in consultation with the OTE Group;

- (g) provide for a deposit of 10% of the total purchase price of the Property to be purchased; and
- (h) include such other information as reasonably requested or identified as being necessary or required by the Monitor, in consultation with the OTE Group.

Selection of Successful Bid

13. Binding Offers will be valued based upon numerous factors, including, without limitation, items such as the purchase and the net value provided by such offer, the claims likely to be created by such offer in relation to other offers, the identity, circumstances and ability of the bidder to successfully complete such transactions, the proposed transaction documents, the effects of the bid on the stakeholders of the OTE Group, factors affecting the speed, certainty and value of the transactions, the assets included or excluded from the offer, any related restructuring costs, and the likelihood and timing of consummating such transactions, each as determined by the Monitor, in consultation with the OTE Group.
14. The Monitor may aggregate separate Binding Offers together to create one "Binding Offer" package for the whole sale of the Property of the OTE Group, upon consultation with the OTE Group.
15. The Monitor will: (i) review and evaluate each Binding Offer, provided that each Binding Offer may be re-negotiated with the Monitor and the applicable Qualified Bidder, upon consultation with the OTE Group, and may be amended, modified or varied to improve such Binding Offer as a result of such negotiations; and (ii) identify the highest or otherwise best Binding Offer(s) (the "**Successful Bid(s)**", and a Qualified Bidder making such Successful Bid, a "**Successful Bidder**") for any particular Property of the OTE Group in whole or part.
16. The Monitor, in consultation with the OTE Group may provide a recommendation to the Court to approve one or more Successful Bids. The Monitor shall have no obligation to enter into a Successful Bid to reject any or all Binding Offers and/or to recommend to the Court that the Bid Process be terminated without the selection of a Successful Bid.
17. Notwithstanding the process and deadlines outlined above with respect to the Bid Process, the Monitor, at its reasonable discretion and upon consultation with the OTE Group may, at any time:
 - a. pause, terminate, amend or modify the Bid Process in accordance with the terms set out herein;
 - b. remove any portion of the Property from the Bid Process; and/or
 - c. establish further or other procedures for the Bid Process.

Confidentiality, Stakeholder/Bidder Communication and Access to Information

18. All discussions regarding the Bid Process should be directed through the Monitor. Under no circumstances should the management of the OTE Group or any stakeholder of the OTE Group

be contacted directly without the prior consent of the Monitor. Any such unauthorized contact or communication could result in exclusion of the interested party from the Bid Process. For greater certainty, nothing herein shall preclude a stakeholder from contacting potential bidders with the agreement of the Monitor to advise that the OTE Group have commenced a Bid Process and that they should contact the Monitor if they are interested in participating in the Bid Process.

19. If it is determined by the Monitor, in consultation with the OTE Group, that it would be worthwhile to facilitate a discussion between one or more Qualified Bidders and a stakeholder or other third party as a consequence of a condition to closing or potential closing condition identified by such Qualified Bidder, the Monitor may provide such Qualified Bidder with the opportunity to meet with the relevant stakeholder or third party to discuss such condition or potential condition, with a view to enabling such bidder to seek to satisfy the condition or assess whether the condition is not required or can be waived. Any such meetings or other form of communication will take place on terms and conditions considered appropriate by the Monitor, in consultation with the OTE Group. The Monitor must be provided with the opportunity to be present at all such communications or meetings.

Supervision of the Bid Process

20. This Bid Process does not and will not be interpreted to create any contractual or other legal relationship between the OTE Group and any Qualified Bidder or any other party, other than as specifically set forth in an NDA or any definitive agreement executed.
21. Participants in the Bid Process are responsible for all costs, expenses and liabilities incurred by them in connection with the submission of any Binding Offer, due diligence activities, and any other negotiations or other actions, whether or not they lead to the consummation of a transaction.
22. The Monitor shall have no liability whatsoever to any person or entity, including without limitation any Potential Bidder, Qualified Bidder, or any other creditor or stakeholder, or any Applicant, as a result of implementation or otherwise in connection with this Bid Process, except to the extent that any such liabilities result from the gross negligence or wilful misconduct of the Monitor, as determined by the Court, and all such persons or entities shall have no claim against the Monitor in respect of the Bid Process for any reason whatsoever.

SCHEDULE "A"

The Monitor:

KPMG Inc.

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

Attention: Paul van Eyk, Duncan Lau and Tahreem Fatima

Email: pvaneyk@kpmg.ca / duncanlau@kpmg.ca / tahreemfatima@kpmg.ca

with copies to:

Bennett Jones LLP

100 King Street West, Suite 3400
Toronto, ON M5X 1A5

Attention: Raj Sahni and Thomas Gray

Email: sahnir@bennettjones.com / grayt@bennettjones.com

APPENDIX “B”

**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.
(collectively the "Applicants")**

**MONITOR'S REPORT ON CASH FLOW STATEMENT
(paragraph 23(1)(b) of the CCAA)**

The attached statement of projected cash flow of Original Traders Energy Ltd. and 2496750 Ontario Inc. (collectively referred to herein as "**OTE Group**" or the "**Applicants**") prepared as of the 25th day of September 2023, consisting of the period from September 18, 2023 to April 28, 2024 (the "**Third Extended Cash Flow Forecast**"), has been prepared by management of the Applicants, in consultation with the Monitor for the purpose described in Note 1, using the probable and hypothetical assumptions set out in the notes to the Third Extended Cash Flow Forecast.

Our review and consultation consisted of inquiries, analytical procedures and discussions related to information supplied by management and employees of the Applicant. Since hypothetical assumptions need not be supported, our procedures with respect to them were limited to evaluating whether they were consistent with the purpose of the Third Extended Cash Flow Forecast. We have also reviewed the support provided by management for the probable assumptions and the preparation and presentation of the Third Extended Cash Flow Forecast.

Based on our review, nothing has come to our attention that causes us to believe that, in all material respects:

- a) the hypothetical assumptions are not consistent with the purpose of the Third Extended Cash Flow Forecast;
- b) as at the date of this report, the probable assumptions developed by management are not suitably supported and consistent with the plans of the Applicants or do not provide a reasonable basis for the Third Extended Cash Flow Forecast, given the hypothetical assumptions; or
- c) the Third Extended Cash Flow Forecast does not reflect the probable and hypothetical assumptions.

Since the Third Extended Cash Flow Forecast is based on assumptions regarding future events, actual results will vary from the information presented even if the hypothetical assumptions occur, and the variations may be material. Accordingly, we express no assurance as to whether the Third Extended Cash Flow Forecast will be achieved.

The Third Extended Cash Flow Forecast has been prepared solely for the purpose described in the notes thereto and readers are cautioned that it may not be appropriate for other purposes.

Dated at Toronto, in the Province of Ontario, this 26th day of September 2023.

KPMG Inc.
In its capacity as Proposed Monitor of
Original Traders Energy Group
And not in its personal or corporate capacity

Per:



Paul van Eyk
CPA, CA, CIRP, IFA, Fellow of INSOL

**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.
(collectively the "Applicants")**

**MANAGEMENT'S REPORT ON CASH FLOW STATEMENT
(paragraph 10(2)(b) of the CCAA)**

The management of Original Traders Energy Ltd. and 2496750 Ontario Inc. (collectively referred to herein as "**OTE Group**" or the "**Applicants**") have developed the assumptions and prepared the attached statement of projected cash flow as of the 25th day of September 2023, consisting of the period from September 18, 2023 to April 28, 2024 (the "**Third Extended Cash Flow Forecast**").

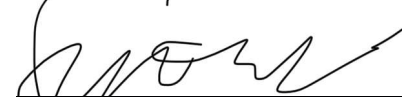
The hypothetical assumptions are reasonable and consistent with the purpose of the Third Extended Cash Flow Forecast described in the notes therein, and the probable assumptions are suitably supported and consistent with the plans of the Applicants and provide a reasonable basis for the Third Extended Cash Flow Forecast. All such assumptions are disclosed in the notes therein.

Since the Third Extended Cash Flow Forecast is based on assumptions regarding future events, actual results will vary from the information presented, and the variations may be material.

The Third Extended Cash Flow Forecast has been prepared solely for the purpose described in the notes therein, using the probable and hypothetical assumptions set out therein. Consequently, readers are cautioned that the Third Extended Cash Flow Forecast may not be appropriate for other purposes.

Dated at Toronto, in the Province of Ontario, this 26th day of September 2023.

**Original Traders Energy Ltd. and 2496750 Ontario
Inc.**



Scott Hill
President

**Original Traders Energy Group
Third Extended Cash Flow Forecast
Notes and Summary of Assumptions**

**In the Matter of the CCAA Proceedings of Original Traders Energy Ltd. and 2496750 Ontario Inc.
(collectively the “Applicants”)**

Disclaimer

In preparing this cash flow forecast (the “**Third Extended Cash Flow Forecast**”), the Applicants have relied upon unaudited financial information and have not attempted to further verify the accuracy or completeness of such information. Since the Third Extended Cash Flow Forecast is based on assumptions about future events and conditions that are not ascertainable, the actual results achieved during the Third Extended Cash Flow Forecast period will vary from the Third Extended Cash Flow forecast, even if the assumptions materialize, and such variations may be material. There is no representation, warranty, or other assurance that any of the estimates, forecasts or projections will be realized.

The Third Extended Cash Flow Forecast is presented in Canadian dollars. All defined terms that are not otherwise defined herein are to have the same meaning ascribed to them in the fifth report of the Monitor dated September 25, 2023 (the “**Fifth Report**”).

- Note 1 Purpose of the Third Extended Cash Flow forecast**
The purpose of the Third Extended Cash Flow Forecast is to present the estimated cash receipts and disbursements of the Applicants for the period from September 18, 2023 to April 28, 2023 (the “**Forecast Period**”), in respect of its proceedings under the CCAA. The Third Extended Cash Flow Forecast has been prepared by management of OTE Group (“**Management**”), in consultation with the Monitor based on available financial information at the date of the Fifth Report. Readers are cautioned that this information may not be appropriate or relied upon for any other purpose.
- Note 2 Customer Collections**
Customer collections are comprised of income earned from the collection of existing receivables and new sales generated from the sale of fuel products to petroleum stations and First Nations’ communities across Southern Ontario.
- Note 3 U.S. Tax Refunds**
These receipts relate to the collection of U.S. tax refunds. There are no U.S. tax refunds forecasted to be collected in the Forecast Period.
- Note 4 Purchases**
OTE Group purchases inventory from various third-party suppliers. Forecasted purchases are reflective of current operating levels.
- Note 5 Pre-Filing Payments/Deposits**
These disbursements relate to amounts owing for goods and services supplied prior to the filing date by certain third-party suppliers, up to a maximum aggregate amount of \$6.625 million (the “**Pre-Filing Critical Supplier Payments**”), if in the opinion of OTE Group, the supplier is critical to the ongoing operations and OTE Group's business. There are no Pre-Filing Critical Supplier Payments forecasted to be paid by the OTE Group in the Forecast Period.
- Note 6 Operating Expenses**
Operating expenses are comprised of production expenses related to blending fuel products and general business expenses, including insurance, utilities, freight, general and administrative, among others.

- Note 7** **Rent and Royalties**
These disbursements represent rental payments for the Applicant's four leased facilities. Rental payments include base rent and other costs provided for in the respective leases. Royalties are payable to the unrelated third parties which OTE Group leases two of its blending sites from and are based on quantities sold out of each location. Rent and royalties are forecasted based on historical run-rates and paid on the first day of each month.
- Note 8** **Payroll**
Payroll expenses include salaries and wages, payroll taxes and remittances, accrued vacation, and employee benefits paid to OTE Group Employees. Payroll expenses are forecasted based on current headcount levels and are paid weekly.
- Note 9** **Professional Fees**
Professional fees include payments to the Applicant's legal counsel, the Proposed Monitor, and the Proposed Monitor's legal counsel.
- Note 10** **Tax Remittances**
Tax remittances relate to federal and provincial tax payments made on the fifteenth day of each month related to the month prior.
- Note 11** **Bank Payments**
Bank payments represent lease payments made to the secured lender, Royal Bank of Canada ("RBC"), during the Forecast Period.

Original Traders Energy Third Extended Cash Flow Forecast In Thousands \$, Unaudited	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	Total				
	01/1/2023	10/1/2023	10/15/2023	10/29/2023	11/18/2023	11/26/2023	12/9/2023	12/10/2023	12/17/2023	12/24/2023	1/8/2024	1/14/2024	1/21/2024	1/28/2024	2/4/2024	2/11/2024	2/18/2024	2/25/2024	3/3/2024	3/10/2024	3/17/2024	3/24/2024	3/31/2024	4/7/2024	4/14/2024	4/21/2024	4/28/2024	5/5/2024	5/12/2024	5/19/2024	5/26/2024	6/2/2024				
Receipts																																				
Customer collections	4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000	3,500	2,310	1,190																		
Tax refunds																																				
Total receipts	4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000	3,500	2,310	1,190																		
Operating disbursements																																				
Business expenses/deposits	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	2,000																				
Operating expense	200	200	200	200	250	250	250	250	250	250	250	250	250	250	250	250	250	250	250	250	250	250	250	250	250	250	250	250	250	250	250	250	250	250	250	250
Rent and royalties	45	45	45	45	45	45	45	45	45	45	45	45	45	45	45	45	45	45	45	45	45	45	45	45	45	45	45	45	45	45	45	45	45	45	45	45
Payroll	75	75	75	75	75	75	75	75	75	75	75	75	75	75	75	75	75	75	75	75	75	75	75	75	75	75	75	75	75	75	75	75	75	75	75	75
Professional fees	75	75	75	75	75	75	75	75	75	75	75	75	75	75	75	75	75	75	75	75	75	75	75	75	75	75	75	75	75	75	75	75	75	75	75	75
Tax remittances	3,200	3,200	3,200	3,200	3,200	3,200	3,200	3,200	3,200	3,200	3,200	3,200	3,200	3,200	3,200	2,000																				
Bank payments	20	20	20	20	20	20	20	20	20	20	20	20	20	20	20	20	20	20	20	20	20	20	20	20	20	20	20	20	20	20	20	20	20	20	20	20
Total operating disbursements	6,550	3,418	3,350	3,461	3,395	3,461	3,395	3,461	3,395	3,461	3,395	3,461	3,395	3,461	3,395	2,419	335	446	335	1,560	320	431	320	346	320	308	195	80	79	161	70	90	79	88,135		
Net cash flow	(2,550)	582	650	539	600	(2,570)	605	539	650	(2,550)	605	539	650	(2,550)	605	1,085	1,975	744	(335)	(1,560)	(320)	(431)	(320)	(346)	(320)	(308)	(195)	(80)	(75)	(161)	(70)	(90)	(75)	(5,139)		
Operating cash	13,867	11,317	11,902	12,552	13,090	13,740	11,775	12,314	10,989	11,538	12,188	12,733	12,698	13,442	11,547	11,227	10,755	10,475	10,475	10,130	9,810	9,604	9,309	9,144	8,963	8,803	8,983	9,219	9,144	8,963	8,883	8,803	8,883	13,867		
Net cash flow	(2,550)	585	650	539	600	(2,570)	605	539	650	(2,550)	605	539	650	(2,550)	605	1,085	1,975	744	(335)	(1,560)	(320)	(431)	(320)	(346)	(320)	(308)	(195)	(80)	(75)	(161)	(70)	(90)	(75)	(5,139)		
Ending cash	11,317	11,902	12,552	13,090	13,740	11,170	11,775	12,314	12,864	10,384	10,989	11,538	12,188	9,638	10,723	12,886	13,442	13,107	11,547	11,227	10,755	10,475	10,475	10,130	9,810	9,604	9,309	9,219	9,144	8,963	8,883	8,803	8,883	8,728		

This is Exhibit "D" referred to in the Affidavit of Lauren Nixon sworn by Lauren Nixon of the City of Hamilton, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on October 2, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

BONNIE GREENAWAY

Lauren Nixon

From: Cristian Delfino <cdelfino@airdberlis.com>
Sent: Thursday, September 28, 2023 5:14 PM
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Cc: Steven L. Graff; Martin J. Henderson; Tamie Dolny; Samantha Hans
Subject: FACTUM: In the Matter of Compromise or Arrangement of Original Traders Energy Ltd. and 2496750 Ontario Inc. - Court File No. CV-23-00693758-00CL

EXTERNAL MESSAGE

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Cristian

Cristian Delfino

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Aird & Berlis LLP

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Cc: Steven L. Graff <sgraff@airdberlis.com>; Martin J. Henderson <mhenderson@airdberlis.com>; Tamie Dolny <tdolny@airdberlis.com>

Subject: MOTION RECORD: In the Matter of Compromise or Arrangement of Original Traders Energy Ltd. and 2496750 Ontario Inc. - Court File No. CV-23-00693758-00CL

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Thank you,

Samantha Hans

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Thank you,

Cristian

Cristian Delfino

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From: Samantha Hans <shans@airdberlis.com>
Sent: Monday, September 25, 2023 3:23 PM
To: duncanlau@kpmg.ca; pvaneyk@kpmg.ca; tahreemfatima@kpmg.ca; blomax@kpmg.ca; Raj Sahni; Thomas Gray; 'AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca'; edward.park@justice.gc.ca; insolvency.unit@ontario.ca; Ron.Hester@Ontario.ca; Enzo.Sorgente@ontario.ca; Dave.Gerald@ontario.ca; steven.groeneveld@ontario.ca; McPherson, Brent (MAG); Mortimer, Adam (MAG); Brazil, Laura (MAG); Jaipargas, Roger; Kimberly Thomas (kthomas@kimberlythomas.com); Mills, Craig; info@elfc.ca; Christopher Caruana; Cowley Jason; Welch Aarin; Hassen Marie (2) (Consultant); customerservice@cwbnationalleasing.com; MOCC Client Service; jmaclellan@blg.com; Dutrizac, Jason; dullmann@blaney.com; IFerreira@blaney.com; Monique Jilesen; Jonathan Chen; Keely Kinley; jorkin@goldblattpartners.com; nshelsen@goldblattpartners.com; jsmith@gsnh.com; dmacdonald@wnj.com; Wassom, Brian; Pendery, Mark S.; Dawson, Rian C.; Peter H. Levitt; Aliette D. Rodz; Aleksey Shtivelman; RMuscolino@weaversimmons.com; cjunior@grllp.com; bldelorenzi@saultlawyers.com; abeites@edc.ca; apiekarska@edc.ca; rclark2@edc.ca; mhb@blakes.com; kelly.bourassa@blakes.com; brendan.macarthur-stevens@blakes.com; Keliher, Christopher; sales@alliedmarine.com; Justin.Sullivan@AlliedMarine.com; Andy Simmons; info@breweryacht.com; Max.Starnino@paliareroland.com; joseph.berger@paliareroland.com; Anthony Gatensby; claims@sphericassurance.com; am@amck.law
Cc: Steven L. Graff; Martin J. Henderson; Tamie Dolny
Subject: MOTION RECORD: In the Matter of Compromise or Arrangement of Original Traders Energy Ltd. and 2496750 Ontario Inc. - Court File No. CV-23-00693758-00CL

EXTERNAL MESSAGE**SERVICE LIST:**

We act on behalf of Original Traders Energy Ltd., Original Traders Energy LP, 2496750 Ontario Inc. and OTE Logistics LP (collectively, the **"OTE Group"**) in the above-noted matter. A copy of the OTE Group's motion record (the **"Motion Record"**) is hereby served upon you in accordance with the e-Service Protocol of the Commercial List. Capitalized terms that are undefined in this email are as used in the Motion Record.

The OTE Group seeks, *inter alia*:

- (a) an extension of the stay of proceedings to April 26, 2024;
- (b) an amendment to the Claims Procedure granted under the terms of the claims procedure order dated April 27, 2023, to resolve claims by former employees of the OTE Group;
- (c) the approval of a sales process for the business and property of the OTE Group, excluding the assets identified at Schedule "A" to the Injunctive Order dated March 15, 2023; and
- (d) approval of the Fifth Report.

Please see the below link for the Motion Record:

<https://airdberlis.sharefile.com/d-s0a3f8288b8d84e5f8ce1ada74a2dac4d>

The Motion Record will be shortly hereafter filed with the Court and uploaded to CaseLines when available. The enclosed relief will be sought at the motion scheduled for October 4, 2023.

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A videoconference link to the hearing will be available on CaseLines. If you have any technical issues with access, please contact the undersigned.

Thank you,

Samantha Hans


T 437.880.6105
F 416.863.1515
E shans@airdberlis.com

Aird & Berlis LLP | Lawyers
Brookfield Place, 181 Bay Street, Suite 1800
Toronto, Canada M5J 2T9 | airdberlis.com



This email is intended only for the individual or entity named in the message. Please let us know if you have received this email in error. If you did receive this email in error, the information in this email may be confidential and must not be disclosed to anyone.

This is Exhibit "E" referred to in the Affidavit of Lauren Nixon sworn by Lauren Nixon of the City of Hamilton, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on October 2, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

BONNIE GREENAWAY

From: Monique Jilesen <mjilesen@litigate.com>

Sent: Friday, September 29, 2023 11:56 AM

To: Tamie Dolny <tdolny@airdberlis.com>; Jonathan Chen <jchen@litigate.com>; Keely Kinley <kkinley@litigate.com>; jorkin@goldblattpartners.com; nshelsen@goldblattpartners.com

Cc: Steven L. Graff <sgraff@airdberlis.com>; Martin J. Henderson <mhenderson@airdberlis.com>; Raj Sahni <SahniR@bennettjones.com>; GrayT@bennettjones.com; Van Eyk, Paul <pvaneyk@kpmg.ca>; Lau, Duncan <duncanlau@kpmg.ca>

Subject: RE: October 4 Date - Additional Relief

Hi Tamie –

Having reviewed the motion materials and the report of the Monitor we do not agree that the motion for the sales process be heard on October 4th. We will want to cross-examine Mr. Hill on his affidavit. We are available on October 12th and will deliver a notice of examination unless you wish to discuss an alternate mutually agreeable date.

Separately. We can advise you that we intend to bring a motion for the appointment of a CRO and related relief. We expect to be in a position to deliver that record on Monday.

In addition to addressing the Mareva Order, we can schedule the respective outstanding motions on the 4th. We are in that context agreeable to a short virtual appearance. I should note that I have a potential conflict with Justice Steele – it does not relate to this case and I have no personal or professional connection with her. It relates instead to a family member of Justice Steele. I don't think that this is an issue if it's a scheduling appointment (and it may not be an issue in any event) but I did want to identify it for counsel if there is any concern. I'm happy to speak with any of you about it directly.

Monique

From: Tamie Dolny <tdolny@airdberlis.com>

Sent: Wednesday, September 20, 2023 6:10 PM

To: Jonathan Chen <jchen@litigate.com>; Monique Jilesen <mjilesen@litigate.com>; Keely Kinley <kkinley@litigate.com>; jorkin@goldblattpartners.com; nshelsen@goldblattpartners.com

Cc: Steven L. Graff <sgraff@airdberlis.com>; Martin J. Henderson <mhenderson@airdberlis.com>; Raj Sahni <SahniR@bennettjones.com>; GrayT@bennettjones.com; Van Eyk, Paul <pvaneyk@kpmg.ca>; Lau, Duncan <duncanlau@kpmg.ca>

Subject: Re: October 4 Date - Additional Relief

EXTERNAL MESSAGE

Hi Jon - we intend to serve materials early next week.

Get [Outlook for iOS](#)

From: Jonathan Chen <jchen@litigate.com>
Sent: Wednesday, September 20, 2023 5:58:16 PM
To: Tamie Dolny <tdolny@airdberlis.com>; Monique Jilesen <mjilesen@litigate.com>; Keely Kinley <kkinley@litigate.com>; jorkin@goldblattpartners.com <jorkin@goldblattpartners.com>; nshelsen@goldblattpartners.com <nshelsen@goldblattpartners.com>
Cc: Steven L. Graff <sgraff@airdberlis.com>; Martin J. Henderson <mhenderson@airdberlis.com>; Raj Sahni <SahniR@bennettjones.com>; GrayT@bennettjones.com <GrayT@bennettjones.com>; Van Eyk, Paul <pvaneyk@kpmg.ca>; Lau, Duncan <duncanlau@kpmg.ca>
Subject: RE: October 4 Date - Additional Relief

Hi Tamie,

Thank you for your note.

While we are not necessarily opposed to a sales process, we are unable to provide our position or raise any concerns until we have had an opportunity to review the motion materials.

Do you expect to serve the materials by end of week?

Thanks,

Jon

From: Tamie Dolny <tdolny@airdberlis.com>
Sent: Monday, September 18, 2023 11:23 AM
To: Jonathan Chen <jchen@litigate.com>; Monique Jilesen <mjilesen@litigate.com>; Keely Kinley <kkinley@litigate.com>; jorkin@goldblattpartners.com; nshelsen@goldblattpartners.com
Cc: Steven L. Graff <sgraff@airdberlis.com>; Martin J. Henderson <mhenderson@airdberlis.com>; Raj Sahni <SahniR@bennettjones.com>; GrayT@bennettjones.com; Van Eyk, Paul <pvaneyk@kpmg.ca>; Lau, Duncan <duncanlau@kpmg.ca>
Subject: October 4 Date - Additional Relief

EXTERNAL MESSAGE

All,

Please note that the OTE Group intends to seek approval on the scheduled October 4 date for additional relief related to a stay extension, a sales process over the assets and property of the OTE Group broadly, and a minor amendment to the claims procedure to deal with certain employee claims. We anticipate that this relief will be largely uncontroversial, and is being included for the sake of timing and convenience.

If any of the various impacted parties have concerns over this additional relief being included at that return date, please advise by tomorrow afternoon.

Thanks in advance.

Tamie Dolny
Aird & Berlis LLP

T 647.426.2306

E tdolny@airdberlis.com

This email is intended only for the individual or entity named in the message. Please let us know if you have received this email in error. If you did receive this email in error, the information in this email may be confidential and must not be disclosed to anyone.

This is Exhibit "F" referred to in the Affidavit of Lauren Nixon sworn by Lauren Nixon of the City of Hamilton, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on October 2, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

BONNIE GREENAWAY

From: Jonathan Chen

Sent: Friday, September 29, 2023 3:47 PM

To: JUS-G-MAG-CSD-Toronto-SCJ Commercial List <MAG.CSD.To.SCJCom@ontario.ca>

Cc: Steven L. Graff <sgraff@airdberlis.com>; Tamie Dolny <tdolny@airdberlis.com>; Martin J. Henderson <mhenderson@airdberlis.com>; Raj Sahni <SahniR@bennettjones.com>; nshelsen@goldblattpartners.com; jorkin@goldblattpartners.com; Monique Jilesen <mjilesen@litigate.com>; Keely Kinley <KKinley@litigate.com>

Subject: RE: Shift to Online Hearing - In the Matter of ORIGINAL TRADERS LTD and 2496750 ONTARIO INC - CV No. 23-00693758-00CL

Dear Alsou,

We are counsel for Mr. Glenn Page and 2658658 Ontario Inc. We write to clarify the second option presented below by Ms. Dolny.

Amongst counsel, there has been no agreement to use the time scheduled on October 4 for a hearing on the approval of the bid process and ancillary relief. Our position is that a hearing for such relief should be adjourned to a date to be set, and in the alternative, if it does proceed, it is opposed and much more than one hour will be required.

Regards,

Jonathan



Jonathan Chen*

T 416-865-3553
M 647-390-3968
F 416-865-2843
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130 Adelaide St W
Suite 2600
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Canada M5H 3P5
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This e-mail may contain legally privileged or confidential information. This message is intended only for the recipient(s) named in the message. If you are not an intended recipient and this e-mail was received in error, please notify us by reply e-mail and delete the original message immediately. Thank you. Lenzner Slaght LLP.

From: Tamie Dolny <tdolny@airdberlis.com>

Sent: Friday, September 29, 2023 3:15 PM

To: JUS-G-MAG-CSD-Toronto-SCJ Commercial List <MAG.CSD.To.SCJCom@ontario.ca>

Cc: Steven L. Graff <sgraff@airdberlis.com>; Martin J. Henderson <mhenderson@airdberlis.com>; Raj Sahni <SahniR@bennettjones.com>; nshelsen@goldblattpartners.com; jorkin@goldblattpartners.com; Monique Jilesen

094

<mjilesen@litigate.com>; Jonathan Chen <jchen@litigate.com>; Keely Kinley <kkinley@litigate.com>

Subject: Shift to Online Hearing - In the Matter of ORIGINAL TRADERS LTD and 2496750 ONTARIO INC - CV No. 23-00693758-00CL

EXTERNAL MESSAGE

Good afternoon Alsou,

Regarding the above-noted matter, counsel no longer require an in-person full day hearing on October 4 as certain issues have been resolved. Relief being sought is currently being discussed between parties and is subject to ongoing negotiations, but will either constitute:

1. Approval of a consent order relating to the existing Mareva Injunction, and a scheduling hearing for certain other relief; or
2. A hearing for approval of the bid process and ancillary relief (which may be opposed), and remaining relief noted in #1 above.

Could the Honourable Court please advise if virtual court time for an hour is available on October 4? Thanks kindly. Impacted counsel have been CCed for reference.

Tamie Dolny

T 647.426.2306

F 416.863.1515

E tdolny@airdberlis.com

Aird & Berlis LLP | Lawyers
Brookfield Place, 181 Bay Street, Suite 1800
Toronto, Canada M5J 2T9 | airdberlis.com



This email is intended only for the individual or entity named in the message. Please let us know if you have received this email in error. If you did receive this email in error, the information in this email may be confidential and must not be disclosed to anyone.

This is Exhibit "G" referred to in the Affidavit of Lauren Nixon sworn by Lauren Nixon of the City of Hamilton, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on October 2, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

BONNIE GREENAWAY

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

NOTICE OF EXAMINATION

TO: Scott Hill, a representative of the Applicants, Original Traders Energy Ltd, and and
 2496750 ONTARIO INC.

YOU ARE REQUIRED TO ATTEND (*choose one of the following*)

- In person
 By telephone conference
 By video conference

at the following location: on Zoom, through the office of Network Reporting & Mediation, Suite 3600, 100 King Street West, Toronto, ON, M5X 1E3 on **Thursday, October 12, 2023, at 10:00 a.m.** for:

- Cross-examination on your affidavit dated September 25, 2023;
- Examination for discovery
- Examination for discovery on behalf of or in place of [identify party]
- Examination in aid of execution
- Examination in aid of execution on behalf of or in place of [identify party]

YOU ARE REQUIRED TO BRING WITH YOU and produce at the examination the documents mentioned in subrule 30.04(4) of the *Rules of Civil Procedure*, and the following documents and things:

1. All original documents including any sound recording, videotape, film, photograph, chart, graph, map, plan, survey, book of account and information recorded or stored by means on any device in your possession, control or power which are relevant to any matters in issue in this proceeding and a list of all documents over which you claim privilege, including, but not limited to:

- a) The affidavit of Scott Hill, dated, September 25, 2023, and the affidavits referred therein, including the affidavits of Scott Hill dated January 27, 2023, February 7, 2023, March 12, 2023, April 20, 2023, and July 10, 2023;
- b) The reports of the Monitor;
- c) All documents pertaining to the certificate of possession of Scott Hill for 7263 Indian Line, Scotland Ontario in the Six Nations of the Grand River Territory; and
- d) All documents pertaining to discontinuation, and the removal of all movable assets and equipment from the blending locations, being Tyendinaga and Whitefish.

September 29, 2023

LENCZNER SLAGHT LLP

Barristers

130 Adelaide Street West, Suite 2600

Toronto, ON M5H 3P5

Monique J. Jilesen (43092W)

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Lawyers for the Respondent, Glenn Page and
2658658 Ontario Inc.

AND TO: GOLDBLATT PARTNERS LLP

Barristers and Solicitors

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Suite 1039

Toronto ON M5G 2C2

Jessica Orkin

Email: jorkin@goldblattpartners.com

Tel: (416) 977-6070

Fax: (416) 591-7333

Lawyers for the Respondent, Mandy Cox

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

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

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

PROCEEDING COMMENCED AT
TORONTO

NOTICE OF EXAMINATION

LENCZNER SLAGHT LLP

Barristers

130 Adelaide Street West, Suite 2600
Toronto, ON M5H 3P5

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Keely Kinley (84224G)

kkinley@litigate.com

Tel: (416) 238-7442

Tel: (416) 865-9500

Fax: (416) 865-9010

Lawyers for the Respondents

This is Exhibit “H” referred to in the Affidavit of Lauren Nixon sworn by Lauren Nixon of the City of Hamilton, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on October 2, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

BONNIE GREENAWAY

Court File No.: _____

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

B E T W E E N :

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

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

Applicants

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

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

I. INTRODUCTION

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

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

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

iii. 249

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

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

iv. Non-Applicant Entities

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

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

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

B. Physical Operations

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

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

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

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

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

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

i. Head Office Property and Six Nations Blending Location

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

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

ii. Tyendinaga Blending Location

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

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

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

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

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

ii. Whitefish Blending Location

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

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

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

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

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

iii. Unsecured Liabilities

a. Suppliers

Suppliers

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

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

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

b. Notes Receivable

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

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

c. Notes Payables

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

iv. CRA Liabilities

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

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

vii. Additional Litigation

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

a. Fuel Supply Agreement Issues

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

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

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



DocuSigned by:
Samantha Hans
402DBD39546546A...

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

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

SAMANTHA HANS (LSO#: 84737H)

This is Exhibit "I" referred to in the Affidavit of Lauren Nixon sworn by Lauren Nixon of the City of Hamilton, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on October 2, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

BONNIE GREENAWAY

109
WILLIAM E. AZIZ

32 Shorewood Place
Oakville, Ontario
Canada
L6K 3Y4

Bus: (905) 849-4332
Cell: (416) 575-2200
Fax : (905) 849-4248

E-Mail: baziz@bluetreadvisors.com

PROFILE

I am an FCPA, FCA having been made a Fellow in November 2022. I am also a senior executive and experienced director. I am a value-oriented executive with the experience to enhance profitability. I lead by building strong management teams focused on profitability, while promoting strong and flexible strategic thinking to create solutions. I have extensive, domestic and international experience in multi-party negotiations, strategic partnerships, mergers, acquisitions and divestitures. I have experience with all aspects of balance sheet and operational restructurings, in environments with and without unions.



BUSINESS EXPERIENCE

BLUETREE ADVISORS
President and CEO

2001 to Present

BlueTree Advisors Inc. is my advisory firm focused on improving the performance of client companies, by providing expertise to manage operational, financial and organizational challenges. I view the principal objective of my work as the restoration and realization of value for stakeholders.

Services include business recovery, strategic planning, operational execution, and financial remediation-including balance sheet transformation. BlueTree is focused on improving stakeholder value in the face of the most significant challenges, including dealing with governance issues. My focus is the development of strategic and tactical plans where situations involve uncertainty, rapidly changing dynamics, real option back-up strategies, and negotiation strategies. I work to assist companies in making the changes that are necessary to ensure long-term viability.

As President of BlueTree Advisors I have more than 34 years of advisory, turnaround and corporate restructuring experience. I have extensive domestic and international experience in multi-party negotiations, strategic partnerships, and M+A activities. I have led restructurings as an executive or board member involving all aspects of balance sheet and operational restructurings in diverse industries including financial services, telecom, steel manufacturing, coal mining, professional service firms, alternative financing, softwood lumber, refrigerated warehousing, transportation, retail, manufacturing, and media. I have extensive experience with large unions in collective bargaining situations related to restructurings.

I have recently been the Chief Restructuring Officer of The Toronto Star Group, JTI Macdonald, U.S. Steel Canada, Walter Energy Canada Holdings, Cash Stores Financial, and Hollinger. I am the Litigation Trustee for The Cash Stores Financial in respect of litigation stemming from the CCAA proceedings of that company.

I have acted as an advisor to Boards of Directors and management in both formal and informal transformations of businesses. I have played significant roles in many major Canadian restructurings in roles as a CFO, CRO and CEO. I have become recognized as one of Canada's experts in financial and operational restructurings since leaving Ernst & Young as a Chartered Accountant in 1988.

My work encompasses formal proceedings under the CCAA and the Bankruptcy and Insolvency Act but is broader in scope. I have been retained in the course of binding arbitration to resolve shareholder disputes and various mediation processes. I have also been involved in consensual, out-of-court restructurings, advising executive committees, and refinancings of both public and private companies.

I have dealt with all types of commercial disputes and have led complex, multi-party negotiations to resolve labour, litigation, and intellectual property disputes. I have extensive expertise in cost reduction, organizational transformation, mergers & acquisitions, and refinancing initiatives.

OTHER INFORMATION

Director

Current Boards

Atlantica Sustainable Infrastructure plc- NASDAQ Listed (May 2020 to Present)

Chair of the Compensation Committee

Member of the Audit Committee

Member of the Related Party Transactions Committee

Maple Leaf Foods Inc. – TSE Listed (May 2014 to Present)

Chair of the Audit Committee (May 2014 to present)

Member Safety and Sustainability Committee (May 2020 to present)

Member Human Resources and Compensation Committee (2014 to 2020)

Member of the Advisory Boards of-

McCain Capital Partners (November 2017 to present)

Ernst & Young Alumni Advisory Council

Prior Boards

Fengate Real Assets (November 2014 to 2021)

Ivey Leadership Advisory Council-(September 2012 to January 2019)

Formed to represent and support the Ian O. Ihnatowycz Institute for Leadership at the Ivey School of Business, Western University in leadership thought

Canada Bread Company Limited – TSE Listed (April 2005 to March 2014)

Chair of the Audit Committee and Member Governance Committee

OMERS-(January 2014 to December 31, 2019)

Chair of the Investment Committee (\$105 billion capital pool)

Member Human Resources and Compensation Committee

OMERS-(February 2009 to December 2012)

Chair of the Investment Committee

Member Human Resources and Compensation Committee and Joint Council for Governance

Tecumseh Products Company-NASDAQ Listed (August 2007 to August 2009)

Chair of Governance and Nominating Committee

Chair of Independent Committee for two proxy fights

Member of Audit Committee

Sun-Times Media Group, Inc.-NYSE Listed (August 2007 to July 2008)

Doman Industries Limited -TSE Listed (2003 to 2004)

Member of Restructuring Committee and Chair of Audit and Governance Committees

Algoma Steel Inc.-TSE Listed (2002)

Member

Canadian and Ontario Institutes of Chartered Accountants-FCPA, FCA

Institute of Corporate Directors

Insolvency Institute of Canada

Toronto Club

London Hunt and Country Club

Hamilton Golf and Country Club

Young Presidents Organization, Great Lakes Chapter (formerly Western Ontario)

Education

Osgoode Hall Pension Law Program

Institute of Corporate Directors ICD.D Certification

Executive Media Training with Jeff Ansell of Siren Communications

Harvard Law School: Program on Negotiation for Senior Executives

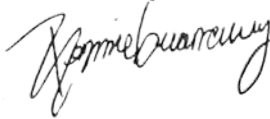
Harvard Law School: Dealing with Difficult People and Difficult Situations

Chartered Accountant (Ontario) - 1982

Ivey School of Business at Western University: Honors Business Administration – 1979

Interests Golf, fly fishing, and skiing.

This is Exhibit “J” referred to in the Affidavit of Lauren Nixon sworn by Lauren Nixon of the City of Hamilton, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on October 2, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

BONNIE GREENAWAY



October 2, 2023

Original Traders Energy Ltd. and 2496750 Ontario Inc. (as “**Applicants**”) together with OTE Logistics LP and Original Traders Energy LP (with OTE Logistics LP, the “Partnerships” and collectively with the Applicants, the “**OTE Group**” or the “**Company**”)

Appointment of BlueTree Advisors Inc.

This engagement letter (“**Engagement**”) sets out the terms and conditions upon which BlueTree Advisors Inc. (“**BlueTree**”) is appointed to provide the services of William E. Aziz (“**Aziz**”) as an independent contractor to perform the duties set out herein as Chief Restructuring Officer of OTE Group.

The OTE Group requires assistance in connection with certain *Companies’ Creditors Arrangement Act* (Canada) (“**CCAA**”) proceedings (the “**CCAA Proceedings**”) that were commenced by it on January 30, 2023. As BlueTree and Aziz are prepared to provide such assistance on the basis that they will be relieved from all claims, damages and losses, including any claims regarding environmental matters and any claims regarding matters for which a director of OTE Group may be personally liable, other than claims arising from their gross negligence or wilful misconduct, including, without limitation, in accordance with an order incorporating the protections referenced in s.11.8(3) of the CCAA or s.14.06(2) of the *Bankruptcy and Insolvency Act* (Canada) (“**BIA**”).

1. The Services

The services to be provided by BlueTree shall include the following (which are subject to ongoing supervision and direction by the court presiding over the CCAA Proceedings (the “**Court**”), and the terms of any order issued by the Court in the CCAA Proceedings):

- (a) the development and implementation of a plan of compromise and arrangement in respect of the OTE Group providing for, among other things, the release of claims against the members of the OTE Group and their current and former directors and officers, in a form satisfactory to creditors (a “**Restructuring Plan**”);
- (b) advising and assisting with any sales and investments solicitation process in respect of all or part of OTE Group’s business or assets (the “**SISP**”), including

successfully completing a transaction in respect of all or any part of OTE Group's business or assets (a "**Transaction**");

- (c) communicating and negotiating with all stakeholder groups of OTE Group with a view to successfully implementing a Restructuring Plan and/or a Transaction;
- (d) signing for or on behalf of OTE Group such documents, instruments, certificates or affidavits as may reasonably be required to commence or implement a Restructuring Plan and/or a Transaction; and
- (e) such other or incidental matters as maybe thought necessary or advisable by BlueTree in consultation with the stakeholders of OTE Group, while at all times acting with respect to the fiduciary duties required of an officer of OTE Group.

BlueTree may not provide the services of any person other than Aziz without the prior written approval of the Monitor in the CCAA Proceedings or the Court. The services of BlueTree do not include any authority for, or charge, management or control of, any sites or facilities at or on which OTE Group operates or for any day-to-day operations or operating activities of any of OTE Group's business, including, without limitation, any responsibility for environmental matters.

2. **Information**

BlueTree shall be entitled to rely on the material accuracy and completeness of all information provided to BlueTree, directly or indirectly, orally or in writing, in connection with this engagement. BlueTree shall be under no obligation to verify independently any such information provided to or otherwise obtained by it. BlueTree shall also be under no obligation to determine whether there have been any changes in such information or to investigate any change in such information occurring after the date any of the same were provided to or obtained by BlueTree.

3. **Fees and Expenses**

BlueTree's compensation for services referred to above will be as follows:

- (a) a work fee (the "**Work Fee**") of USD \$75,000 per month payable in advance commencing on the date of its appointment, and then on the corresponding day of each month going forward, or when that day falls on a non-business day, on the first business day thereafter.
- (b) a fee (the "**Success Fee**") payable in cash, which payment shall be triggered on the occurrence of a Triggering Event as follows:
 - (i) USD \$200,000 on the completion of a Transaction, which may, without limitation take the form of:

- (1) a merger, consolidation, reorganization, recapitalization, refinancing, business combination or other transaction (including for greater certainty a credit bid) pursuant to which a substantial portion of OTE Group is acquired by, or combined with, any person, group of persons, partnership, corporation or other entity (including, without limitation, existing creditors, employees, affiliates, and/or shareholders of OTE Group) (collectively, a “**Purchaser**”);
 - (2) any acquisition, directly or indirectly, by a Purchaser (or by one or more persons acting together with a Purchaser pursuant to a written agreement or otherwise), in a single transaction or a series of transactions (including for greater certainty a credit bid), of (x) all or substantially all of the assets or operations of any entity comprising OTE Group; or (y) all or substantially all of the outstanding or newly-issued shares or units of equity securities of any entity comprising OTE Group (or any securities convertible into, or options, warrants or other rights to acquire such equity securities);
 - (3) any other sale, transfer or assumption of a substantial portion of the assets or liabilities of OTE Group (including, without limitation, any consolidation or merger involving any entity comprising OTE Group), provided however that a liquidation of OTE Group’s assets by auctioneers or other liquidators shall not be a Triggering Event unless BlueTree is actively involved in providing the services of Aziz throughout the course of such auction or liquidation and until the proceeds of such auction or liquidation are received;
 - (4) except with respect to any interim and / or court-approved debtor-in-possession financing, the issuance, whether public or private, of substantial financing to and/or equity securities of any entity comprising OTE Group; and
 - (5) the confirmation of any plan of compromise or arrangement with respect to any entity comprising OTE Group effecting any of the foregoing;
- (ii) The following amounts on implementation of a Restructuring Plan:
- (1) \$500,000 in the event that the Restructuring Plan is filed in a form that is reasonably expected to be accepted by the requisite majority of creditors prior to December 31, 2023;

- (2) \$400,000 in the event that the Restructuring Plan is filed in a form that is reasonably expected to be accepted by the requisite majority of creditors prior to March 31, 2024; and,
 - (3) \$300,000 in the event that the Restructuring Plan is filed in a form that is reasonably expected to be accepted by the requisite majority of creditors prior to June 30, 2024.
- (c) BlueTree shall be entitled to a Work Fee for a minimum period of two (2) months if this Engagement is terminated by OTE Group (other than as a result of a default by BlueTree hereunder) before a Transaction. BlueTree acknowledges that OTE Group may require the services of BlueTree even if a Transaction is completed prior to the period ending on the two (2) month anniversary of this Engagement.

The Success Fee will be payable if the events in paragraph 3(b) are completed or implemented (as the case may be) during the term of this engagement or within a period of six (6) months following: (i) the termination of this engagement by OTE Group other than as a result of a breach of this Engagement by BlueTree or (ii) the termination of the Engagement by BlueTree as a result of the breach of this Engagement by OTE Group. However, no Success Fee will be payable if BlueTree terminates this Engagement in accordance with Section 6.

In addition to the foregoing OTE Group shall reimburse BlueTree for its reasonable out-of-pocket expenses including, but not limited to, legal fees, travel and communications expenses, courier charges and accommodation expenses, any of which may be incurred by BlueTree without prior written consent. Such reimbursable expenses will be payable on receipt of BlueTree's invoices by OTE Group.

All or part of the foregoing may be subject to federal Goods and Services Tax, Harmonized Sales Tax, British Columbia Provincial Sales Tax or other taxes ("GST/HST"). Where such tax is applicable, an additional amount equal to the amount of tax owing thereon will be charged to and payable by OTE Group, in addition to the fees of BlueTree. BlueTree shall provide its GST/HST registration number to OTE Group upon execution of this Engagement.

4. Other Services

If BlueTree is required to perform services in addition to those described above or to provide services of individuals other than Aziz, then the terms and conditions relating to such services will be outlined in a separate Engagement and the fees for such services will be in addition to the fees payable hereunder and will be negotiated separately and in good faith.

5. Indemnity

OTE Group shall indemnify BlueTree (the "**Indemnity**"). The Indemnity shall be in addition to and not in substitution for any other liability which OTE Group or any other person may have to BlueTree or any other persons indemnified pursuant to indemnities apart from such Indemnity.

To the extent that OTE Group currently maintains director and officer insurance, OTE Group will continue to benefit from, to the extent possible or practicable, the director and officer insurance coverage that was in place as at the date of Blue Tree's appointment, or coverage substantially comparable to that insurance, that includes confirmation from the underwriters that Aziz is fully covered by the insurance as an "Insured Person" within the meaning of any such policy.

In connection with this Engagement and without limiting the generality of the foregoing, OTE Group shall indemnify and hold harmless BlueTree and Aziz from and against any and all losses, expenses, claims, actions, damages and liabilities, joint or several, including the aggregate amount paid in reasonable settlement of any actions, suits, proceedings, investigations or claims and the reasonable fees and expenses of legal counsel on a solicitor and its or his own client basis that may be incurred in advising with respect to and/or defending any action, suit, proceeding, investigation or claim that may be made or threatened against either of BlueTree or Aziz or in enforcing this indemnity (collectively, the "**Claims**") to which BlueTree and/or Aziz may become subject to or otherwise involved in any capacity insofar as the Claims relate to, are caused by, result from, arise in respect of or are based upon, directly or indirectly, this engagement; provided however that OTE Group shall not be required to indemnify BlueTree or Aziz for such Claims to the extent that any such Claims are determined by a court of competent jurisdiction in a final judgment that has become non-appealable to have resulted from the gross negligence or willful misconduct of BlueTree or Aziz.

Furthermore, BlueTree and Aziz shall not have any liability (whether directly or indirectly in contract or tort or otherwise) to OTE Group or any person asserting claims on behalf of or in right of OTE Group for or in connection with this engagement except to the extent any losses, expenses, claims, actions, damages or liabilities incurred by OTE Group are determined by a court of competent jurisdiction in a final judgment that has become non-appealable to have resulted from the gross negligence or wilful misconduct of BlueTree or Aziz. In no event shall BlueTree's or Aziz's liability exceed the aggregate amount of fees actually received by BlueTree or Aziz under this Engagement.

In no event shall OTE Group, without BlueTree and/or Aziz's prior written consent, settle, compromise, consent to the entry of any judgment in or otherwise seek to terminate any action, suit, proceeding, investigation or claim in respect of which indemnification may be sought hereunder (whether or not BlueTree and/or Aziz is a party thereto) unless such settlement, compromise, consent or termination includes a release of BlueTree and Aziz from any liabilities arising out of such action, suit, proceeding, investigation or claim. This indemnity can only be varied by the mutual agreement of OTE Group, BlueTree and Aziz.

Promptly after receiving notice of any action, suit, proceeding or claim against either of BlueTree or Aziz or receipt of notice of the commencement of any investigation which is based, directly or indirectly, upon any matter in respect of which indemnification may be sought in accordance with the terms hereof from OTE Group, BlueTree and/or Aziz will notify OTE Group in writing of the particulars thereof. The omission to notify OTE Group shall not relieve OTE Group of any liability which OTE Group may have to either of BlueTree and/or Aziz except to the extent such failure materially prejudices OTE Group's rights.

OTE Group also agrees to reimburse BlueTree and/or Aziz for the time spent by BlueTree and/or Aziz in connection with any claim at any time following the end of the engagement at the hourly rate of USD \$1,000.00 plus applicable taxes. BlueTree and Aziz may retain counsel to separately represent it or him in the defence of a claim, which shall be at the expense of OTE Group on a solicitor and its or his own client basis if (i) OTE Group does not assume the defence of a claim, (ii) OTE Group agrees to separate representation or (iii) BlueTree and/or Aziz is advised by legal counsel that there is an actual or potential conflict in OTE Group's, BlueTree's and/or Aziz's respective interests or additional defences are available to BlueTree and/or Aziz which make representation by the same counsel inappropriate.

6. Survival of Terms and Termination

This engagement may be terminated by a written notice to that effect:

- (a) by OTE Group; or
- (b) by BlueTree;

in each case upon not less than ten (10) days' written notice to that effect to the other persons mentioned in this section and to the Monitor provided that the obligations of OTE Group to indemnify BlueTree, to pay any amounts due to BlueTree pursuant to this Engagement, including fees, expenses and tax, and the representations and warranties provided by OTE Group in connection with this Engagement shall survive the completion of the BlueTree engagement hereunder or other termination of this Engagement.

7. Confidentiality

BlueTree will not use confidential information obtained from OTE Group and any of its representatives except in connection with or arising from the services to be provided hereunder and will not disclose such confidential information to any third party or to any of its affiliates, employees or advisors except in connection with or further to the services to be provided hereunder and will not use or make available to OTE Group or any of its representatives confidential information that BlueTree has obtained from any other client or that BlueTree may have developed or obtained in connection with its other activities.

8. Other Activities

Aziz serves as a director of a number of other corporations which are not directly competitive with OTE Group or its affiliates and BlueTree provides services to other clients, including in the role as chief restructuring officer. BlueTree confirms that these other activities will not interfere with the ability of BlueTree or Aziz to provide the services contemplated by this Engagement.

9. Other Matters

This Engagement will enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. This Engagement shall be governed by and construed in accordance the laws of the Province of Ontario and the parties hereby irrevocably attorn to the jurisdiction of the courts of the Province of Ontario. If any provision hereof shall be determined to be invalid or unenforceable in any respect, such determination shall not affect such provision in any other respect or any other provision hereof. Headings are used for convenience of reference only and shall not affect the interpretation hereof.

10. Notices

All notices or other communications under this letter shall be in writing and e-mailed or delivered by personal delivery, if to Company at:

AIRD & BERLIS LLP
Brookfield Place
181 Bay Street , Suite 1800
Toronto, ON
M5J 2T9

Attention: Steve Graff
Email: sgraff@airdberlis.com

and if to BlueTree:

BlueTree Advisors Inc.
32 Shorewood Place
Oakville, ON L6K 3Y4

Attention: William E. Aziz
Email: baziz@bluetreeadvisors.com

or as each party may specify in written notice to the other party. Its notices and communications shall be effective when e-mailed or delivered, as the case may be, or, if such day is not a business day, on the first business day thereafter.

Yours very truly,

BLUETREE ADVISORS INC.

by

William E. Aziz

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

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

AFFIDAVIT OF LAUREN NIXON

LENCZNER SLAGHT LLP

Barristers

130 Adelaide Street West, Suite 2600

Toronto, ON M5H 3P5

Monique J. Jilesen (43092W)

Tel: (416) 865-2926

Email: mjilesen@litigate.com

Jonathan Chen (63973A)

Tel: (416) 865-3553

Email: jchen@litigate.com

Bonnie Greenaway (77318M)

Tel: (416) 865-6763

Email: bgreenaway@litigate.com

Keely Kinley (84224G)

Tel: (416) 238-7442

Email: kkinley@litigate.com

Lawyers for the Respondents

**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**

**AFFIDAVIT OF ELIZABETH LALONDE
(Affirmed October 2, 2023)**

I, **ELIZABETH LALONDE**, of the Town of Whitby, in the Province of Ontario, **AFFIRM AND SAY AS FOLLOWS:**

1. I am a legal assistant at Goldblatt Partners LLP and have been assisting Jessica Orkin and Natai Shelsen, counsel for Mandy Cox, 27453864 Ontario (“GPMC Management Services”), Gen7 Brands International Inc. (“Gen7 Brands”) and a number of gas stations operating under the Gen7 Fuel brands (the “Gen7 Station LPs”), with respect to court file no. CV-23-00693758-00CL. As such, I have knowledge of the matters described herein, or I have received this information from others, in which case I have stated the source of that information and I verily believe it to be true.

A. Information about the OTE Group’s Operating Locations and operations provided in the affidavits of Scott Hill filed in this proceeding

2. In the Affidavit of Scott Hill dated January 27, 2023 (“**First Hill Affidavit**”), filed in support of the OTE Group’s application for the Initial Order under the *Companies Creditors Arrangement Act*, RSC 1985, c C-36, the following information was provided about the “Operating Locations” of the OTE Group:

B. Physical Operations

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

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

- a) a head office in the Six Nations of the Grand River Territory of Scotland, Ontario (the “**Head Office**”), located at the municipal address of 7273 Indian Line, Scotland, Ontario;
- b) a blending center in the Six Nations of the Grand River Territory of Scotland, Ontario (the “**Six Nations Blending Location**”), located at the municipal address of 7263 Indian Line, Scotland, Ontario;
- c) a blending centre in Tyendinaga Mohawks of Bay of Quinte of Shannonville, Ontario (the “**Tyendinaga Blending Location**”), located at the municipal address of 184 Industrial Park Rd., Shannonville, Ontario;
- d) a blending centre in Atikameksheng Anishnawbek Territory of Naughton, Ontario (the “**Whitefish Blending Location**”, and with (a) to (c) above, the “**Operational Locations**”), located at the municipal address of Lots 13, 14 and 15 of Business Park Road, Chi-Zhiingwaak Business Park in Naughton, Ontario; and
- e) a blending centre currently under construction in Couchiching First Nation Territory of Fort Frances, Ontario (the “**Couchiching Location**”), located at the municipal address of Frog Creek Road in Fort Frances, Ontario.

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

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

i. Head Office Property and Six Nations Blending Location

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

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

ii. Tyendinaga Blending Location

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

45. OTE LP negotiated a lease agreement dated February 18, 2020 with the Tyendinaga Landlord (the “**Tyendinaga Lease**”). A copy of the Tyendinaga Lease is attached hereto as **Exhibit “J”**. The Tyendinaga Lease is a “completely carefree net lease” (s. 1.3) to the Tyendinaga Landlord, and is not registered by the Landlord or Tenant (terms as defined in the Tyendinaga Lease) under the Indian Land Registry as it is not a lease entered into pursuant to *Indian Act*.

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

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

ii. Whitefish Blending Location

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

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

50. As stated at s. 2(b) of the Whitefish Lease, the monthly net rent payable on the Whitefish Lease for the first five years of the Term (as defined in the Whitefish Lease) is the sum of \$138,600 per annum, payable monthly in advance in equal installments of \$11,550 commencing on September 1, 2021 for the first day of each and every

month, and with administrative and other fees, totals \$12,729.83 per month. The Whitefish Landlord also receives royalties at a rate of \$0.0025/L pursuant to the Whitefish Lease.

iii. Couchiching Location

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

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

3. In the Affidavit of Scott Hill dated September 25, 2023 ("**Seventh Hill Affidavit**"), filed in support of the motion brought by the OTE Group made returnable October 4, 2023, the following information was provided:

26. Over the course of the recent months, certain key customers have ceased their relationships with the OTE Group. This has resulted in a loss of anticipated revenue and has added to the industry challenges that the OTE Group currently faces due to aggressive customer pricing and reduced vendor terms. In light of these circumstances, the OTE Group, with the assistance of the Monitor, has prepared a plan to significantly reduce the operations of the OTE Group (the "**Reduced Operations Plan**") in order to minimize the operating costs and conserve the cash of the business.

27. The first steps of the Reduced Operations Plan have been put into motion. At the outset of these proceedings, and as outlined and defined in the First Hill Affidavit, the OTE Group had three operating blending locations: the Six Nations Blending Location, the Tyendinaga Blending Location, and the Whitefish Blending Location. These locations were all leased by the OTE Group.

28. Pursuant to the Reduced Operations Plan, and as at the date of this Affidavit, the Tyendinaga Blending Location and Whitefish Blending Location (collectively, the "**Discontinued Locations**") have been discontinued. All movable assets and equipment have been removed from these locations and transferred to the Six Nations Blending Location. I understand that further details on the Discontinued Locations and their associated gas and fuel licenses are contained in the Fifth Report.

4. Capitalized terms in the remainder of this affidavit have the same meaning as set out in the above excerpts from the First Hill Affidavit and the Seventh Hill Affidavit.

5. For ease of reference, copies of the Tyendinaga Lease and the Whitefish Lease, taken from Exhibits J and K to the First Hill Affidavit, are attached hereto as **Exhibits “A” and “B”** respectively.

B. Further information regarding the Head Office and the Six Nations Blending Location

6. As noted above, in the First Hill Affidavit, Scott Hill identified that the municipal addresses of the Head Office and the Six Nations Blending Location were, respectively, 7273 and 7263 Indian Line, Scotland Ontario.

7. In order to confirm that the Head Office and the Six Nations Blending Location are located on lands that are reserve lands within the meaning of the *Indian Act*, I searched for these addresses on Google Earth, using the “Canada Lands” GIS overlay that is publicly available from Natural Resources Canada (“**NRCan**”). NRCan’s “Canada Lands” overlay is a downloadable GIS overlay that identifies the administrative boundaries and cadastral parcels within Indian reserves, federal national parks and the territories, and permits these boundaries and parcels to be viewed in Google Earth. Further information about NRCan’s “Canada Lands” dataset is available at <https://natural-resources.canada.ca/maps-tools-and-publications/maps/canada-lands-surveys/tools-applications-canada-lands-surveys/11094#d1>.

8. My search in Google Earth for the municipal address of the Head Office, “7273 Indian Line, Scotland, Ontario”, identified a location on the north side of Indian Line, to the west of Mohawk Road. NRCan’s “Canada Lands” overlay identifies that these lands on the north side of Indian Line form part of Six Nations Reserve 40, and are reserve lands within the meaning of the *Indian Act*. Attached hereto as **Exhibit “C”** is a screenshot from Google Earth showing the results of this search for “7273 Indian Line, Scotland, Ontario”, with NRCan’s “Canada Lands” overlay activated (purple boundaries). As noted in the top left of Exhibit “C”, the Google Earth program indicated that the satellite imagery shown in this exhibit dates from July 2021.

9. My search in Google Earth for the municipal address of the Six Nations Blending Location, “7263 Indian Line, Scotland, Ontario”, did not return a result. I am advised by Glenn Page that the

Six Nations Blending Location is located immediately behind the Head Office, and is accessed via a driveway to the immediate west of the driveway used for the Head Office.

10. Based on the Google Earth satellite imagery and NRCan’s “Canada Lands” overlay shown at Exhibit “C”, I infer that the Six Nations Blending Location is in fact located on the same cadastral parcel as the Head Office.

11. Attached hereto as **Exhibit “D”** is a print-out from Google Earth, with NRCan’s “Canada Lands” overlay activated, with the details showing for the cadastral parcel where the Head Office and the Six Nations Blending Location are located. NRCan’s “Canada Lands” overlay provides the following information for this cadastral parcel:

DESCRIPTION	LAND PARCEL / PARCELLE DE TERRAIN
NRCan PIN / NIP RNCan	1054664
PARCEL DESIGNATOR / DÉSIGNATION DE PARCELLE	LOT 32-7 CONCESSION 1 TOWNSHIP OF TUSCARORA
REMAINDER / RÉSIDU	NO / NON
PLAN	65905 CLSR ON
ADMINISTRATIVE AREA / RÉGION ADMINISTRATIVE	SIX NATIONS INDIAN RESERVE NO. 40 / RÉSERVE INDIENNE DES SIX NATIONS NO. 40

12. Attached hereto as **Exhibit “E”** is a copy of CLSR 65905 (Canada Lands Survey Report), which I downloaded from NRCan’s publicly available survey database (<https://clss.nrcan-rncan.gc.ca/clss/plan/search-recherche>). A review and comparison of Exhibit “D” and Exhibit “E” confirms that the cadastral parcel where the Head Office and the Six Nations Blending Location are located is the parcel known as Lot 32-7 Concession 1 Township Tuscarora CLSR 65905.

13. The Indian Lands Registry System (“**ILRS**”) is a searchable database maintained by Indigenous Services Canada, that provides a record of registered instruments for a reserve or for a particular parcel of reserve land that is governed by the *Indian Act*. The ILRS can be accessed by any member of the public by registering for an account at https://services.aadnc-aadnc.gc.ca/ILRS_Public/Home/Home.aspx?ReturnUrl=%2ffilrs_public%2f.

14. I searched in the ILRS for any instruments associated with the NRCan PIN 1054664, the NRCan PIN identified on Exhibit “D”. Attached hereto as **Exhibit “F”** is the ILRS Parcel Abstract Report resulting from that search, which indicates that Scott David Hill holds the Certificate of

Possession 403032342 for the cadastral parcel known as Lot 32-7 Concession 1 Township Tuscarora CLSR 65905.

C. Further information regarding the Tyendinaga Blending Location

15. As noted above, in the First Hill Affidavit, Scott Hill identified the municipal address of the Whitefish Blending Location as 184 Industrial Park Rd., Shannonville, Ontario.

16. My search in Google Earth for the municipal address of the Tyendinaga Blending Location, “184 Industrial Park Rd., Shannonville, Ontario”, identified a location to the north of Old Highway 2, accessed off Industrial Park Road. NRCan’s “Canada Lands” overlay confirmed that these lands form part of “Tyendinaga Mohawk Territory” and are reserve lands within the meaning of the *Indian Act*. Attached hereto as **Exhibit “G”** is a screenshot from Google Earth showing the results of this search for “184 Industrial Park Rd., Shannonville, Ontario”, with NRCan’s “Canada Lands” overlay activated (purple boundaries). As noted in the top left of Exhibit “G”, the Google Earth program indicated that the satellite imagery shown in this exhibit dates from August 2022.

17. Attached hereto as **Exhibit “H”** are two screenshots from Google Earth, with NRCan’s “Canada Lands” overlay activated, with the details showing for the two adjacent cadastral parcels where the Tyendinaga Blending Location is located. NRCan’s “Canada Lands” overlay provides the following information for these two cadastral parcels:

DESCRIPTION	LAND PARCEL / PARCELLE DE TERRAIN
NRCan PIN / NIP RNCan	1014275
PARCEL DESIGNATOR / DÉSIGNATION DE PARCELLE	LOT 11 TYENDINAGA INDUSTRIAL PARK
REMAINDER / RÉSIDU	NO / NON
PLAN	95029 CLSR ON
ADMINISTRATIVE AREA / RÉGION ADMINISTRATIVE	TYENDINAGA MOHAWK TERRITORY / TYENDINAGA MOHAWK TERRITORY

DESCRIPTION	LAND PARCEL / PARCELLE DE TERRAIN
NRCan PIN / NIP RNCan	1014259
PARCEL DESIGNATOR / DÉSIGNATION DE PARCELLE	LOT 12 TYENDINAGA INDUSTRIAL PARK
REMAINDER / RÉSIDU	NO / NON
PLAN	95029 CLSR ON
ADMINISTRATIVE AREA / RÉGION ADMINISTRATIVE	TYENDINAGA MOHAWK TERRITORY / TYENDINAGA MOHAWK TERRITORY

18. The “First Nation Profiles” database maintained by Indigenous Services Canada (<https://fnp-ppn.aadnc-aandc.gc.ca/fnp/Main/index.aspx?lang=eng>) is a publicly available database that provides information about First Nations recognized under the *Indian Act*, including about the reserves associated with each First Nation. I searched in the “First Nation Profiles” database, within the “Reserve” tab, for “Tyendinaga Mohawk Territory”. Attached hereto as **Exhibit “I”** is a print-out of the resulting report, which confirms that “Tyendinaga Mohawk Territory” is the official name of the reserve of the Mohawks of the Bay of Quinte.

19. Attached hereto as **Exhibit “J”** is a copy of CLSR 95029 (Canada Lands Survey Report), which I downloaded from NRCan’s publicly available survey database (<https://clss.nrcan-nrcan.gc.ca/clss/plan/search-recherche>) . A review and comparison of Exhibit “H” and Exhibit “J” confirms that the two cadastral parcels where the Tyendinaga Blending Site is located are the parcels known as Lots 11 and 12, Tyendinaga Industrial Park CLSR 95029.

20. I note that the legal description of the Premises of the Tyendinaga Blending Site is described as follows in the Addendum dated September 24, 2021 to the lease for the Tyendinaga Blending Site, a copy of which is included is as Exhibit “A” hereto (taken from Exhibit J to the First Scott Affidavit):

Lots 11 and 12, Tyendinaga Industrial Park, Tyendinaga Mohawk Territory, as shown on Plan No. 95029, Canada Lands Survey Record

21. I searched in the ILRS for any instruments associated with the NRCan PINs 1014275 and 1014259, the two NRCan PINs identified on Exhibit “H”. Attached hereto as **Exhibit “K”** are the two ILRS Parcel Abstract Reports resulting from that search, which indicate that Thomas Joseph Maracle holds the Certificate of Possession 403018621 for the cadastral parcel known as Lot 11 Tyendinaga Industrial Park CLSR 95029 and for the Certificate of Possession 403018622 for the cadastral parcel known as Lot 12 Tyendinaga Industrial Park CLSR 95029.

D. Further information regarding the Whitefish Blending Location

22. As noted above, in the First Hill Affidavit, Scott Hill identified the municipal address of the Whitefish Blending Location as “Lots 13, 14 and 15 of Business Park Road, Chi-Zhiingwaak Business Park in Naughton, Ontario”.

23. My search in Google Earth for the municipal address of the Whitefish Blending Location, “Business Park Road, Naughton, Ontario”, did not identify a specific location. My search in Google Earth for “Naughton, Ontario” identified a town located to the south-west of Sudbury, Ontario, between Highway 55 (on the south side of the highway) and Simon Lake (on the north shore of Simon Lake). Attached hereto as **Exhibit “L”** is a screenshot of from Google Earth showing the results of this search for “Naughton, Ontario”, with NRCan’s “Canada Lands” overlay activated (purple boundaries). As noted in the top left of Exhibit “L”, the Google Earth program indicated that the satellite imagery shown in this exhibit dates from May 2023. Exhibit “L” shows that there are reserve lands on the south shore of Simon Lake. NRCan’s “Canada Lands” overlay identified that these reserve lands on the south shore of Simon Lake form part of Whitefish Lake Indian Reserve No. 6.

24. I compared the plan of the site of the Whitefish Blending Location included at Schedule B to the Whitefish Lease (a copy of which is attached hereto as Exhibit “B”, taken from Exhibit K to the First Hill Affidavit) with the layout of the cadastral parcels within Whitefish Lake Indian Reserve No. 6 as shown on Exhibit “L”. Through this comparison, I identified the location of Lots 13, 14 and 15 Business Park Road.

25. Attached hereto as **Exhibit “M”** are four screenshots from Google Earth, with NRCan’s “Canada Lands” overlay activated, with the details showing for the four adjacent cadastral parcels where the Whitefish Blending Location is located. NRCan’s “Canada Lands” overlay provides the following information for these four cadastral parcels:

DESCRIPTION	LAND PARCEL / PARCELLE DE TERRAIN
NRCan PIN / NIP RNCan	1234270
PARCEL DESIGNATOR / DÉSIGNATION DE PARCELLE	LOT 13 BUSINESS PARK SUBDIVISION
REMAINDER / RÉSIDU	NO / NON
PLAN	109612 CLSR ON
ADMINISTRATIVE AREA / RÉGION ADMINISTRATIVE	WHITEFISH LAKE INDIAN RESERVE NO. 6 / RÉSERVE INDIENNE WHITEFISH LAKE NO. 6

DESCRIPTION	LAND PARCEL / PARCELLE DE TERRAIN
NRCan PIN / NIP RNCan	1234273
PARCEL DESIGNATOR / DÉSIGNATION DE PARCELLE	LOT 14-1 BUSINESS PARK SUBDIVISION

REMAINDER / RÉSIDU	NO / NON
PLAN	109612 CLSR ON
ADMINISTRATIVE AREA / RÉGION ADMINISTRATIVE	WHITEFISH LAKE INDIAN RESERVE NO. 6 / RÉSERVE INDIENNE WHITEFISH LAKE NO. 6

DESCRIPTION	LAND PARCEL / PARCELLE DE TERRAIN
NRCAN PIN / NIP RNCAN	1234272
PARCEL DESIGNATOR / DÉSIGNATION DE PARCELLE	LOT 14-2 BUSINESS PARK SUBDIVISION
REMAINDER / RÉSIDU	NO / NON
PLAN	109612 CLSR ON
ADMINISTRATIVE AREA / RÉGION ADMINISTRATIVE	WHITEFISH LAKE INDIAN RESERVE NO. 6 / RÉSERVE INDIENNE WHITEFISH LAKE NO. 6

DESCRIPTION	LAND PARCEL / PARCELLE DE TERRAIN
NRCAN PIN / NIP RNCAN	1234274
PARCEL DESIGNATOR / DÉSIGNATION DE PARCELLE	LOT 15 BUSINESS PARK SUBDIVISION
REMAINDER / RÉSIDU	NO / NON
PLAN	109612 CLSR ON
ADMINISTRATIVE AREA / RÉGION ADMINISTRATIVE	WHITEFISH LAKE INDIAN RESERVE NO. 6 / RÉSERVE INDIENNE WHITEFISH LAKE NO. 6

26. Attached hereto as **Exhibit “N”** is a copy of CLSR 109612 (Canada Lands Survey Report), which I downloaded from NRCAN’s publicly available survey database (<https://clss.nrcan-ncan.gc.ca/clss/plan/search-recherche>).

27. The First Nation Land Registry System (“**FNLRS**”) is a searchable database maintained by Indigenous Services Canada, that provides a record of registered instruments for each reserve or for every individual parcel of reserve land that is subject to the *Framework Agreement on First Nations Land Management Act* (previously, the *First Nations Land Management Act*). The FNLRS can be accessed by any member of the public by registering for an account at https://services.aadnc-aadnc.gc.ca/ILRS_Public/Home/Home.aspx?ReturnUrl=%2fils_public%2f.

28. I searched in the FNLRS for any instruments associated with the NRCAN PINs 1234270, 1234272, 1234273 and 1234274, the four NRCAN PINs identified on Exhibit “M”. Attached hereto as **Exhibit “O”** are the four FNLRS Instrument Details reports resulting from that search, which indicate that Original Traders Energy LP has a registered sub-lease over the four cadastral parcels

known as Lots 13, 14-1, 14-2 and 15 Business Park Subdivision, Whitefish Lake Indian Reserve No. 6, CLSR 109612.

E. Further information regarding the Couchiching Location

29. As noted above, in the First Hill Affidavit, Scott Hill identified the municipal address of the Couchiching Location as “Frog Creek Road in Fort Frances, Ontario”.

30. My search in Google Earth for “Frog Creek Road, Fort Frances” identified a road labelled “Frog Creek Road” located to the north of the City of Fort Frances. Attached hereto as **Exhibit “P”** is a screenshot from Google Earth showing the results of this search for “Frog Creek Road, Fort Frances”, with NRCan’s “Canada Lands” overlay activated (purple boundaries). As noted in the top left of Exhibit “P”, the Google Earth program indicated that the satellite imagery shown in this exhibit dates from May 2023. Exhibit “P” shows that Frog Creek Road and the lands on either side of this road are reserve lands that form part of Couchiching Indian Reserve No. 16A.

31. I am advised by Glenn Page that the Couchiching Location is located at the intersection of Frog Creek Road and the road leading to the garbage dump. Attached hereto as **Exhibit “Q”** is a screenshot from Google Earth, with NRCan’s “Canada Lands” overlay activated, showing the intersection of Frog Creek Road and the road leading to the garbage dump, on which I marked with a yellow box the site identified to me by Mr. Page as the location of the Couchiching Location.

32. Attached hereto as **Exhibit “R”** are two screenshots from Google Earth, with NRCan’s “Canada Lands” overlay activated, with the details showing for the two cadastral parcels where the Couchiching Location is located. NRCan’s “Canada Lands” overlay provides the following information for these two cadastral parcels:

DESCRIPTION	LAND PARCEL / PARCELLE DE TERRAIN
NRCan PIN / NIP RNCAN	1190645
PARCEL DESIGNATOR / DÉSIGNATION DE PARCELLE	GRAVEL PIT
REMAINDER / RÉSIDU	NO / NON
PLAN	1963 CLSR ON
ADMINISTRATIVE AREA / RÉGION ADMINISTRATIVE	COUCHICHING INDIAN RESERVE NO. 16A / RÉSERVE INDIENNE COUCHICHING NO. 16A

DESCRIPTION	LAND PARCEL / PARCELLE DE TERRAIN
NRCAN PIN / NIP RNCAN	1190649
PARCEL DESIGNATOR / DÉSIGNATION DE PARCELLE	LOT 7
REMAINDER / RÉSIDU	NO / NON
PLAN	1963 CLSR ON
ADMINISTRATIVE AREA / RÉGION ADMINISTRATIVE	COUCHICHING INDIAN RESERVE NO. 16A / RÉSERVE INDIENNE COUCHICHING NO. 16A

33. Attached hereto as **Exhibit “S”** is a copy of CLSR 1963 (Canada Lands Survey Report), which I downloaded from NRCAN’s publicly available survey database (<https://clss.nrcan.gc.ca/clss/plan/search-recherche>).

34. I searched in the ILRS for any instruments associated with the NRCAN PINs 1190645 and 1190649, the NRCAN PINs identified on Exhibit “R”. These searches returned no responsive result. I also searched in the ILRS for any records associated with plan “1963”, and this search returned no results relevant to Couchiching Indian Reserve No. 16A. I searched in the ILRS for all registered land parcels on Couchiching Indian Reserve No. 16A, and while this search returned 25 results (as shown in the search results print-out attached hereto as **Exhibit “T”**), none of these parcels had the legal description “Gravel Pit” or “Lot 7”.

F. Further information regarding certain (former) customers of the OTE Group

35. In the First Hill Affidavit, Scott Hill provided at Exhibit A to that affidavit a list of the gas stations that were at that time the customers of the OTE Group. For ease of reference, attached hereto as **Exhibit “U”** is a copy of Exhibit A taken from the First Hill Affidavit.

i. Townline Variety

36. Townline Variety is one of the gas stations identified on the list attached hereto as Exhibit “U”, with an identified municipal address 7329 Indian Line Road, Wilsonville ON NOE 1Z0, Six Nations of the Grand River Territory.

37. My search in Google Earth for the municipal address “7329 Indian Line Road, Wilsonville ON”, identified a parcel at the northwest corner of Indian Line and Mohawk Road, adjacent to the parcel where the Head Office and Six Nations Blending Location are located. Attached hereto as **Exhibit “V”** is a screenshot from Google Earth showing the results of this search for “7329 Indian

Line Road, Wilsonville”, with NRCan’s “Canada Lands” overlay activated (purple boundaries). Attached hereto as **Exhibit "W"** is a further screenshot from Google Earth of the same area, with the details showing for the cadastral parcel corresponding to 7329 Indian Line Road. As noted in the top left of Exhibits “V” and "W", the Google Earth program indicated that the satellite imagery shown in this exhibit dates from July 2021. NRCan’s “Canada Lands” overlay provides the following information for this cadastral parcel:

DESCRIPTION	LAND PARCEL / PARCELLE DE TERRAIN
NRCan PIN / NIP RNCan	1214604
PARCEL DESIGNATOR / DÉSIGNATION DE PARCELLE	LOT 31-17-2 CONCESSION 1 TOWNSHIP OF TUSCARORA
REMAINDER / RÉSIDU	NO / NON
PLAN	105085 CLSR ON
ADMINISTRATIVE AREA / RÉGION ADMINISTRATIVE	SIX NATIONS INDIAN RESERVE NO. 40 / RÉSERVE INDIENNE DES SIX NATIONS NO. 40

38. Attached hereto as **Exhibit “X”** is a copy of CLSR 105085 (Canada Lands Survey Report), which I downloaded from NRCan’s publicly available survey database (<https://clss.nrcan-rncan.gc.ca/clss/plan/search-recherche>) . I noted that the survey CLSR 105085 indicated that the survey 6336R RSO ON was also associated with Lot 31-17-2. Attached hereto as **Exhibit “Y”** is a copy of the survey 6336R RSO ON, which I downloaded from NRCan’s publicly available survey database.

39. I searched in the ILRS for any instruments associated with the NRCan PIN 1214604, the NRCan PIN identified on Exhibit “W”. This search returned no responsive result. I then searched in the ILRS for any records associated with plan “105085”, and this search also returned no responsive result. My search in the ILRS for any records associated with plan “6336R” returned a result for Lot 31-17-2. Attached hereto as **Exhibit “Z”** is the ILRS Parcel Abstract Report for Lot 31-17-2 resulting from that search, which indicates that Donald Herbert Miles Hill holds the Certificate of Possession 141145 for the cadastral parcel known as Lot 31-17-2 Concession 1 Township Tuscarora RSO 6336R.

ii. Bearpaw Gas Bar

40. Bearpaw Gas Bar is one of the gas stations identified on the list attached hereto as Exhibit “U”, with an identified municipal address 310 Sour Springs Road, Hagersville ON NOA 1H0, Six Nations of the Grand River Territory.

41. My search in Google Earth for the municipal address “310 Sour Springs Road, Hagersville ON”, identified a parcel at the southeast corner of 2nd Line (Sour Springs Road) and Bateman Line. Attached hereto as **Exhibit “AA”** is a screenshot from Google Earth showing the results of this search for “310 Sour Springs Road, Hagersville”, with NRCan’s “Canada Lands” overlay activated (purple boundaries). Attached hereto as **Exhibit “BB”** is a further screenshot from Google Earth of the same area, with the details showing for the cadastral parcel corresponding to 310 Sour Springs Road. As noted in the top left of Exhibits “AA” and “BB”, the Google Earth program indicated that the satellite imagery shown in this exhibit dates from July 2021. NRCan’s “Canada Lands” overlay provides the following information for this cadastral parcel:

DESCRIPTION	LAND PARCEL / PARCELLE DE TERRAIN
NRCan PIN / NIP RNCan	1067757
PARCEL DESIGNATOR / DÉSIGNATION DE PARCELLE	LOT 36-19 CONCESSION 2 TOWNSHIP OF TUSCARORA
REMAINDER / RÉSIDU	NO / NON
PLAN	94047 CLSR ON
ADMINISTRATIVE AREA / RÉGION ADMINISTRATIVE	SIX NATIONS INDIAN RESERVE NO. 40 / RÉSERVE INDIENNE DES SIX NATIONS NO. 40

42. Attached hereto as **Exhibit “CC”** is a copy of CLSR 94047 (Canada Lands Survey Report), which I downloaded from NRCan’s publicly available survey database (<https://clss.nrcan.gc.ca/clss/plan/search-recherche>).

43. I searched in the ILRS for any instruments associated with the NRCan PIN 1067757, the NRCan PIN identified on Exhibit “BB”. Attached hereto as **Exhibit “DD”** is the ILRS Instrument Details report resulting from that search, which indicates that Donald Herbert Miles Hill was the grantee of a transfer that occurred in 2008 in respect of the Certificate of Possession for the cadastral parcel known as Lot 36-19 Concession 2 Township of Tuscarora.

iii. Renmar Energy

44. Renmar Energy is one of the gas stations identified on the list attached hereto as Exhibit “U”, with an identified municipal address 3-1110 Highway # 54, Caledonia, ON N3W 2G9, Six Nations of the Grand River Territory.

45. My search in Google Earth for the municipal address “1110 Highway 54, Caledonia ON”, identified a parcel on the north side of Highway 54, to the east of the intersection of Highway 54 and Pauline Johnson Road. Attached hereto as **Exhibit “EE”** is a screenshot from Google Earth showing the results of this search for “1110 Highway 54, Caledonia”, with NRCan’s “Canada Lands” overlay activated (purple boundaries). Attached hereto as **Exhibit “FF”** is a further screenshot from Google Earth of the same area, with the details showing for the cadastral parcel corresponding to 1110 Highway 54. As noted in the top left of Exhibits “EE” and “FF”, the Google Earth program indicated that the satellite imagery shown in this exhibit dates from April 2023. NRCan’s “Canada Lands” overlay provides the following information for this cadastral parcel:

DESCRIPTION	LAND PARCEL / PARCELLE DE TERRAIN
NRCan PIN / NIP RNCan	1052382
PARCEL DESIGNATOR / DÉSIGNATION DE PARCELLE	LOT 59-4 RIVER RANGE TOWNSHIP OF ONANDAGA
REMAINDER / RÉSIDU	NO / NON
PLAN	6863R RSO ON
ADMINISTRATIVE AREA / RÉGION ADMINISTRATIVE	SIX NATIONS INDIAN RESERVE NO. 40 / RÉSERVE INDIENNE DES SIX NATIONS NO. 40

46. I am advised by Glenn Page that Renmar Energy gas station in fact is located mainly upon the southern part of the cadastral parcel to the immediate east of the parcel identified on Exhibit “FF”. Attached hereto as **Exhibit “GG”** is a screenshot from Google Earth, with NRCan’s “Canada Lands” overlay activated (purple boundaries) and with details showing for the cadastral parcel where Renmar Energy gas station is mainly located. NRCan’s “Canada Lands” overlay provides the following information for this cadastral parcel:

DESCRIPTION	LAND PARCEL / PARCELLE DE TERRAIN
NRCan PIN / NIP RNCan	1052336
PARCEL DESIGNATOR / DÉSIGNATION DE PARCELLE	LOT 59-6 RIVER RANGE TOWNSHIP OF ONANDAGA
REMAINDER / RÉSIDU	NO / NON
PLAN	6863R RSO ON

ADMINISTRATIVE AREA / RÉGION ADMINISTRATIVE	SIX NATIONS INDIAN RESERVE NO. 40 / RÉSERVE INDIENNE DES SIX NATIONS NO. 40
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47. Attached hereto as **Exhibit “HH”** is a copy of RSO 6863R, which I downloaded from NRCan’s publicly available survey database (<https://clss.nrcan-rncan.gc.ca/clss/plan/search-recherche>) .

48. I searched in the ILRS for any instruments associated with the NRCan PIN 1052382, the NRCan PIN identified on Exhibit “FF”. Attached hereto as **Exhibit “II”** is the ILRS Instrument Search Results report resulting from that search, which identified four responsive records, as well as copies of the IRLS Instrument Details reports corresponding to those four records. These ILRS records indicate the Certificate of Possession for this parcel known as Lot 59-4 River Range Township of Onandaga 6863R RSO ON is currently held by three individuals who each hold an undivided interest, and that one of these individuals is Roberta Lynn MacNaughton, who holds an undivided one-half interest.

49. I searched in the ILRS for any instruments associated with the NRCan PIN 1052336, the NRCan PIN identified on Exhibit “GG”. Attached hereto as **Exhibit “JJ”** is the ILRS Instrument Details report resulting from that search, which identifies that Roberta Lynn MacNaughton was granted the parcel known as Lot 59-6 River Range, Township of Onandaga 6863R RSO ON by way of administrative transfer from the estate of Anne Rena MacNaughton, in 2005.

50. I am advised by Glenn Page that the Renmar Energy gas station is operated by Scott Hill, in partnership with Roberta MacNaughton.

G. Additional parcel on Indian Line acquired by Scott Hill in 2019

51. Exhibit “C” hereto shows that the cadastral parcel where the Head Office and the Six Nations Blending Location are located, Lot 32-7 Concession 1 Township of Tuscarora, is not a rectangular at its southern end where it abuts Indian Line Road, but rather has a small square parcel carved out on its southwestern corner. Attached hereto as **Exhibit “KK”** is a screenshot from Google Earth showing the cadastral parcel where the Head Office and Six Nations Blending Location are located, with NRCan’s “Canada Lands” overlay activated (purple boundaries), and

with the details showing for the cadastral parcel in the southwestern corner. NRCan's "Canada Lands" overlay provides the following information for this cadastral parcel:

DESCRIPTION	LAND PARCEL / PARCELLE DE TERRAIN
NRCan PIN / NIP RNCan	1055013
PARCEL DESIGNATOR / DÉSIGNATION DE PARCELLE	LOT 32-6 CONCESSION 1 TOWNSHIP OF TUSCARORA
REMAINDER / RÉSIDU	NO / NON
PLAN	65905 CLSR ON
ADMINISTRATIVE AREA / RÉGION ADMINISTRATIVE	SIX NATIONS INDIAN RESERVE NO. 40 / RÉSERVE INDIENNE DES SIX NATIONS NO. 40

52. I searched in the ILRS for any instruments associated with the NRCan PIN 1055013, the NRCan PIN identified on Exhibit "KK". Attached hereto as **Exhibit "LL"** is the ILRS Parcel Abstract report resulting from that search, which indicates that Scott David Hill holds the Certificate of Possession 403041387 for the cadastral parcel known as Lot 32-6 Concession 1 Township of Tuscarora, and that Scott David Hill acquired this Certificate of Possession by way of transfer in September 2019.

H. Recent correspondence involving parties to this matter

53. Copies of the following correspondence are attached to this affidavit:

- a) As **Exhibit "MM"**, a letter dated September 1, 2023 from Massimo Starnino of Paliare Roland Rosenberg Rothstein LLP, to Steven Graff of Aird & Berlis LLP and Raj Sahni of Bennett Jones LLP;
- b) As **Exhibit "NN"**, a letter dated September 7, 2023 from Monique Jilesen of Lenczner Slaughter LLP, to Steven Graff of Aird & Berlis LLP and Raj Sahni of Bennett Jones LLP;
- c) As **Exhibit "OO"**, an email dated September 8, 2023 from Raj Sahni of Bennett Jones LLP;
- d) As **Exhibit "PP"**, a letter dated September 15, 2023 from Massimo Starnino of Paliare Roland Rosenberg Rothstein LLP, to Joseph Haulage Canada Corporation;
- e) As **Exhibit "QQ"**, a letter dated September 15, 2023 from Massimo Starnino of Paliare Roland Rosenberg Rothstein LLP, to Parkland Corporation;

- f) As **Exhibit “RR”**, an email dated September 19, 2023 from Morgan Crilly, counsel to Parkland Corporation;
- g) As **Exhibit “SS”**, a letter dated September 21, 2023 from Michael Beeforth of Dentons Canada LLP, counsel for Parkland Corporation, to Massimo Starnino of Paliare Roland Rosenberg Rothstein LLP;
- h) As **Exhibit “TT”**, a letter dated October 1, 2023 from Massimo Starnino of Paliare Roland Rosenberg Rothstein LLP, to Raj Sahni of Bennett Jones LLP.

54. I swear this affidavit in support of the motion brought by Glenn Page and 2658658 Ontario Inc. for appointment of a Chief Restructuring Officer and other relief, and for no other reason.

AFFIRMED BEFORE ME)
 via videoconference in the City of Toronto)
 in the Province of Ontario on October 2, 2023)
 in accordance with O. Reg. 431/20,)
 Administrating Oath or Declaration Remotely.)

Elizabeth Lalonde

ELIZABETH LALONDE

[Handwritten signature]

 A Commissioner for taking affidavits etc. (or as may be)

Tanya Atherfold-Desilva, a Commissioner, etc.
 Province of Ontario for Goldblatt Partners LLP,
 Barristers and Solicitors. Expires September 8, 2024

THIS IS **EXHIBIT "A"** TO THE
AFFIDAVIT OF ELIZABETH LALONDE

AFFIRMED BEFORE ME
this 2nd day of October, 2023

A handwritten signature in cursive script, appearing to read "Lalonde".

A Commissioner, etc.

This is Exhibit "J" of
the Affidavit of Scott Hill
Sworn before me this 27th day of January, 2023

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

A Commissioner, etc.

THIS LEASE is made this 19th day of February, 2020.

BETWEEN:

Tom Maracle

(collectively referred to herein as the "Landlord")

- and -

Original Traders Energy Limited Partnership

(the "Tenant")

WHEREAS:

1. Tom Maracle is the owner of the lands described in schedule 1 (the "Premises");
2. The Landlord has agreed to lease the Premises to the Tenant on the terms and conditions hereinafter set forth.

NOW THEREFORE THIS LEASE WITNESSES that in consideration of the covenants contained herein, the parties hereto hereby agree as follows:

ARTICLE 1 - GENERAL CONTRACT PROVISIONS

1.1 Definitions - Deal Terms

When used in this Lease the following words or expressions have the meaning hereinafter set forth:

"Additional Basic Rent" is the monthly amount payable in addition to the Basic Rent equal to the amount set out in section 3.2, which shall be exempt from HST and due within fifteen (15) Business Days of the end of the previous calendar month.

"Additional Rent" is all other actual charges payable with respect to the premises, for which invoices are provided, including all utility costs, repairs, lighting requirements, maintenance and taxes, which shall be exempt from HST.

"Basic Rent" is the monthly rent, which shall be exempt from HST equal to the amount set out in section 3.1.

"Business" means the Tenant's development and operation of a Blending Site for fuel distribution.

"Deposit" is the sum of \$1,000.00 which the Landlord acknowledges having received to be applied against the Rent first accruing due hereunder.

“Permitted Use” is for the Tenant to build a Blending Site for fuel distribution and for no other purpose.

“Renewal Period” is the period of one (1) year commencing on the day immediately following the expiry of the Term.

“Term” is the period of twenty (20) years commencing on the Commencement Date subject to renewal as herein set out. If the Commencement Date does not fall on the first day of a month, the Term shall be extended by the number of days in such partial month.

1.2 Definitions - Standard

When used in this Lease the following words or expressions have the meaning hereinafter set forth:

“Architect” is the architect, professional engineer or surveyor used by the Tenant from time to time.

“Business Day” is every day except Saturday, Sunday and statutory holidays.

“Commencement Date” is the date that is the earlier of (a) January 31, 2020 and (b) the day that the Tenant occupies the Premises.

“Environmental Laws” means all applicable federal, provincial and local laws, by-laws including; without limitation, Mohawks of the Bay of Quinte (“MBQ”) laws and MBQ by-laws, and regulations, ordinances and orders in force now or at any time hereafter, pertaining to the environmental protection of the Premises and the regulation or carrying on of the Business. “Environmental Laws” shall include any applicable standard, guideline or policy for the prevention or remediation of a Hazardous Substance.

“Hazardous Substances” are any substance, or material that is or becomes prohibited, controlled or regulated under any Environmental Laws, including without limiting the generality of the foregoing, any paints, solvents, PCB’s, asbestos, contaminants, pollutants, dangerous substances, toxic substances, designated substances, controlled products, wastes, hazardous materials, dangerous goods or petroleum, its derivatives, by-products or other hydrocarbons, fumes, acids, alkali, toxic chemicals in liquid, gaseous or solid form or Microbial Matter.

“Initiating Party” is defined in section 1.22.

“Landlord’s Work” is the following:

- (a) Approval – the Landlord shall secure MBQ Band Council approvals for the Business, with the support of the Tenant;
- (b) Clearing - The Landlord shall clear the Premises of all trees and organic matters;
- (c) Installation – the Landlord shall install perimeter fencing to isolate Lots 11 and 12 of the Premises; and

- (d) Preparation – The Landlord shall prepare the Premises to underside of asphalt design subbase as per the Tenant’s design build requirements to be supplied by May 1, 2020.

“**Lease Year**” is the period of 12 months commencing on the Commencement Date and on each anniversary of it.

“**Microbial Matter**” is fungi or bacterial matter which reproduces through the release of spores or the splitting of cells, including but not limited to mould, mildew and viruses, whether or not such Microbial Matter is living, that causes a risk or may cause a risk to human health or damage to the Premises.

“**Permitted Encumbrances**” are all mortgages of the Landlord’s interest in the Premises, restrictions, covenants, agreements, easements, encroachments, reservations, rights-of-way, limitations and other matters presently registered against title to the Premises and any similar matters that may be registered in the future provided such further matters do not materially adversely impair the use of the Premises for the Permitted Use.

“**Person**”, according to the context, includes any individual, corporation, firm, partnership or other entity, any group of persons, corporations, firms, partnerships or other entities, or any combination thereof.

“**Prime Rate**” is the annual rate of interest announced by The Royal Bank of Canada from time to time as a reference rate for establishing interest rates charged on Canadian dollar loans.

“**Release**” has the meaning contained in the Environmental Laws and includes, without limitation, any release, spill, emission, leak, pumping, injection, abandonment, deposit, disposal, discharge, dispersal, leaching, migration, pouring, emptying, escape, dumping, spraying, burying, incinerating, seeping or placing of Hazardous Substances, including the movement of Hazardous Substances through, on, under or in the air, soil, subsurface strata, surface water or groundwater.

“**Remediate**” means the treatment, excavation, removal or disposal of any part or parts of the Premises in order to remove Hazardous Substances therefrom in accordance with the Environmental Laws and Remediation has a corresponding meaning.

“**Renewal Terms and Conditions**” are the same terms and conditions as provided for in this Lease, with the right to renew annually after the Term. The Basic Rent for the Renewal Period shall be the rental rate at the greater of the rental rate during the last year of the Term or the expiring Renewal Period, if applicable and the current market rate at the commencement of the Renewal Period for premises comparable in quality, size and location, all leasing factors being considered. In the event that the Tenant and the Landlord are unable to agree on such market rate within ninety (90) days following the delivery by the Tenant to the Landlord of notice of its intention to exercise its option to renew, then such current market rate shall be determined in accordance with section 3.4.

“Rent” is Basic Rent, Additional Basic Rent, Additional Rent and any other amounts payable by the Tenant pursuant to this Lease.

“Responding Party” is defined in section 1.22.

“Stipulated Rate of Interest” is the annual interest rate that is five percentage points (5%) in excess of the Prime Rate.

“Tenant’s Work” is defined in section 2.5.

“Transfer” is: (i) an assignment of this Lease in whole or in part including an assignment by operation of law, (ii) a sublease of all or any material part of the Premises; (iii) a parting with or sharing of possession of all or part of the Premises, (iv) if the Tenant is a corporation or trust, a transfer or issue by sale, bequest, inheritance, operation of law or other disposition, or by subscription of all or part of the shares or units of the Tenant which results in a change in the effective control of the Tenant, (v) any transaction by which any right of use or occupancy of all or any part of the Premises is conferred upon anyone, (vi) any mortgage, charge or encumbrance of this Lease or the Premises or any part thereof, or other arrangement under which either this Lease or the Premises becomes security for any indebtedness or other obligations; and (vii) any transaction or occurrence whatsoever which has changed or might change the identity of the Person or Persons having lawful use or occupancy of any part of the Premises. **“Transferor”** means the Person or Persons who is or will be making a Transfer and **“Transferee”** means the Person to whom a Transfer is or is to be made (it being understood that for a Transfer described in (iv) above the Transferor is the Person that has effective voting control before the Transfer and the Transferee is the Person that has effective voting control after the Transfer).

“Unavoidable Delay” is any delay by a party in the performance of its obligation under this Lease caused in whole or in part by any acts of God, strikes, lockouts or other industrial disturbances, acts of public enemies, sabotage, war, blockades, insurrections, riots, epidemics, washouts, nuclear and radiation activity or fallout, arrests, civil disturbances, explosions, breakage of or accident to machinery, any legislative, administrative or judicial action which has been resisted in good faith by all reasonable legal means, any act, omission or event, whether of the kind herein enumerated or otherwise, not within the control of such party, and which, by the exercise of control of such party, could not have been prevented, but lack of funds on the part of such party shall not constitute an Unavoidable Delay.

1.3 Net Lease

It is intended that this Lease is a completely carefree net lease to the Landlord, except as expressly herein set out, and that during the Term the Landlord is not responsible for any costs, charges, expenses and outlays of any nature whatsoever arising from or relating to the Premises, or the use and occupancy thereof, or the contents thereof or the business carried on therein, and the Tenant shall pay all charges, impositions, costs and expenses of every nature and kind, extraordinary as well as ordinary and foreseen as well as unforeseen, relating to the Premises, the use and occupancy thereof, the contents thereof, and the business carried on therein, except as expressly herein set out.

1.4 Heading

The headings introducing sections and articles in this Lease are inserted for convenience of reference only and in no way define, limit, construe or describe the scope or intent of such sections or articles.

1.5 Extended Meanings

The words "hereof", "herein", "hereunder" and similar expressions used in any section or subsection of this Lease relate to the whole of this Lease and not to that section or subsection only, unless otherwise expressly provided. The use of the neuter singular pronoun to refer to any party is deemed a proper reference even though the party is an individual, a partnership, a corporation or a group of two or more individuals, partnerships or corporations. The necessary grammatical changes required to make the provisions of this Lease apply in the plural sense where there is more than one Landlord or Tenant or other party and to either corporations, associations, partnerships, or individuals, males or females, shall in all instances be assumed as though in each case fully expressed. If the Tenant consists of more than one Person, the covenants of the Tenant shall be deemed to be joint and several covenants of each such Person. If the Tenant is a partnership each person who is presently a member of such partnership, and each Person who becomes a member of any successor partnership, shall be and continue to be liable jointly and severally for the performance of this Lease, whether or not such Person ceases to be a member of such partnership or successor partnership.

1.6 Partial Invalidity

(a) If for any reason any term, covenant or condition of this Lease, or the application thereof to any Person or circumstance, is to any extent held or rendered invalid, unenforceable or illegal, then such term, covenant or condition:

- (i) is deemed to be independent of the remainder of this Lease and to be severable and divisible therefrom and its invalidity, unenforceability or illegality shall be deemed not to affect, impair or invalidate the remainder of this Lease or any part thereof; and
- (ii) continues to be applicable to and enforceable to the fullest extent permitted by law except to the extent to which it has been held or rendered invalid, unenforceable or illegal.

1.7 Entire Agreement

This Lease sets forth all the covenants, promises, agreements, conditions and understandings between the Landlord and the Tenant concerning the Premises and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than are herein set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Lease shall be binding unless in writing and signed by the parties to be bound thereby.

1.8 Governing Law

The Lease shall be governed by and construed in accordance with the laws of the MBQ and the laws of the Province of Ontario and Canada, as applicable. Should there be a conflict between the laws of any of the following, the MBQ, the Province of Ontario and Canada, the laws of the MBQ shall prevail. For greater certainty, nothing in this Agreement shall be, or deemed to be, an acknowledgement, agreement or consent by any Party that such Party is governed by or subject to such laws or has attorned to such jurisdiction except with respect to the determination and enforcement of such Parties' rights under this Lease.

1.9 Time of the Essence

Time is of the essence of this Lease and of every part hereof.

1.10 Overholding - No Tacit Renewal

If the Tenant remains in possession of the Premises after the end of the Term with the consent of the Landlord but without having exercised its option to renew (where applicable) or executed and delivered a new lease, there is no tacit or implied renewal of this Lease and the Term hereby granted notwithstanding any statutory provisions or legal presumption to the contrary, and the Tenant shall be deemed to be occupying the Premises as a Tenant from month-to-month at a monthly Basic Rent payable in advance on the first day of each month equal to 100% of the monthly amount of Basic Rent payable during the last month of the Term or Renewal Period, if any, as the case may be, and otherwise upon the same terms, covenants and conditions as are set forth in this Lease (including the payment of all Additional Rent), so far as these are applicable to a monthly tenancy.

1.11 Successors

All rights and liabilities herein granted to or imposed upon the respective parties hereto extend to and bind the respective successors and assigns of each party hereto. No rights, however, shall enure to the benefit of any Transferee of the Tenant unless the Transfer to such Transferee is permitted under the terms of this Lease.

1.12 Waiver

The waiver by the Landlord of any breach of any term, covenant or condition herein contained is not deemed to be a waiver of such term, covenant or condition or of any subsequent breach of the same or of any other term, covenant or condition herein contained. The subsequent acceptance of Rent hereunder by the Landlord is deemed not to be a waiver of any preceding breach by the Tenant of any term, covenant or condition of this Lease, regardless of the Landlord's knowledge of such preceding breach at the time of acceptance of such Rent. No term, covenant or condition of this Lease is deemed to have been waived by the Landlord unless such waiver is in writing by the Landlord.

1.13 Accord and Satisfaction

(a) No payment by the Tenant or receipt by the Landlord of a lesser amount than the Rent herein stipulated is deemed to be other than on account of the earliest stipulated Rent, nor is any endorsement or statement on any cheque or any letter accompanying any cheque or payment as Rent deemed an acknowledgment of full payment or an accord and satisfaction, and the Landlord may accept and cash such cheque or payment without prejudice to the Landlord's right to recover the balance of such Rent or pursue any other remedy provided in this Lease.

(b) No receipt of monies by the Landlord from the Tenant after the termination of this Lease in any lawful manner shall re-instate, continue or extend the Term or Renewal Period, if any, or affect any notice previously given to the Tenant, or operate as a waiver of the right of the Landlord to enforce the payment of Rent then due or thereafter falling due, or operate as a waiver of the right of the Landlord to recover possession of the Premises by proper suit, action, proceedings or other remedy, it being agreed that, after the service of notice to terminate this Lease and the expiration of the time therein specified, and after the commencement of any suit, action, proceeding or other remedy, or after a final order or judgment for possession of the Premises, the Landlord may demand, receive and collect any monies due or thereafter falling due without in any manner affecting such notice, suit, action, proceeding, order or judgment; and any and all such monies so collected shall be deemed payments on account of the use and occupation of the Premises or, at the election of the Landlord, on account of the Tenant's liability hereunder.

1.14 Notices

Any notice, demand, request or other instrument which may be or is required to be given by this Lease to one of the parties shall be in writing and delivered by courier or email to the address indicated below for that party:

(a) if to the Landlord:

(b) Tom Maracle

728 Ridge Road
Tyendinaga Territory
ON K0K 1X0

with a copy to such other Person or at such other address as the Landlord designates by written notice; and

(c) if to the Tenant:

Original Traders Energy Limited Partnership
7331 Indian Line Road
Wilsonville, ON
N0E 1Z0
Attention: Glenn Page, President

glenn.page@originaltradersenergy.com

Any party may at any time give notice in writing to the other party of any change of address of the party giving such notice, and from and after the giving of such notice, the address therein specified is deemed to be the address of such party for the giving of notices hereunder.

Any written communication as aforesaid shall be deemed to have been given or made on the day which it was delivered or sent as aforesaid if it is received at or before 5:00 p.m. MBQ time on the day in question or, if such day is not a Business Day or if such written communication is received after 5:00 p.m. MBQ time, then the written communication shall be deemed to have been given or made on the next following Business Day.

1.15 Registration

This Lease shall not be registered by the Landlord or the Tenant in the Indian Land Registry, as it is not a lease entered into pursuant to the *Indian Act*, R.S.C. 1985, c. I-5.

1.16 Quiet Enjoyment

If the Tenant pays the Rent and other sums herein provided when due, and punctually observes and performs all of the terms, covenants and conditions on the Tenant's part to be observed and performed hereunder, the Tenant shall peaceably and quietly hold and enjoy the Premises for the Term hereby demised without hindrance or interruption by the Landlord or any other Person lawfully claiming by, through or under the Landlord subject, nevertheless, to the terms, covenants and conditions of this Lease.

1.17 Unavoidable Delay

If either party shall be delayed or hindered in or prevented from the performance of any covenant, agreement, work, service, or other act required under this Lease to be performed by such party (except for the payment of Rent), and such delay or hindrance is due to Unavoidable Delay, the performance of any covenant, agreement, work, service, or other act shall be excused for the period of delay and the period for the performance of the same shall be extended by such period.

1.18 Amendments and Supplementary Lease Provisions

This Lease shall not be modified or amended except by an instrument in writing of equal formality herewith and signed by the parties hereto or by their permitted successors or assigns.

1.19 Schedules

The following Schedules form a part of this Lease:

Schedule 1 - Legal description of the Premises

1.20 No Partnership

Notwithstanding anything contained in this Lease it is expressly understood that the Landlord shall not be construed or held to be a partner or associate of or joint venturer with the Tenant in the ownership or conduct or operation of the Business or Premises. The relationship between the parties hereto is and shall at all times remain that of landlord and tenant.

1.21 Delivery of Certificates

The Landlord and the Tenant will, at any time and from time to time, upon the reasonable request of the other party, execute, acknowledge and deliver to the other party without cost a certificate certifying:

- (a) that this Lease is unmodified and in full force and effect (or, if there has been any modification, that this Lease is in full force and effect as so modified and stating such modification);
- (b) the dates, if any, to which Rent has been paid;
- (c) whether there are any existing defaults by the other party to the knowledge of the party making such certification specifying the nature of such defaults, if any; and
- (d) such other matters as may be reasonably requested.

Any such certificate may be relied upon by any party to whom such certificate is directed.

1.22 Arbitration

Whenever any arbitration is permitted or required hereunder, arbitration proceedings shall be commenced by a party desiring arbitration (the "**Initiating Party**") giving notice to the other party entitled to participate in the arbitration proceedings (the "**Responding Party**") specifying the matter to be arbitrated and requesting an arbitration thereof. In the event that the Initiating Party and Responding Party are unable to agree upon an arbitration procedure within fifteen (15) days after delivery of such notice, the Initiating Party shall, by written notice to the Responding party, designate an arbitrator. The Responding Party shall, within fifteen (15) days thereafter, be entitled to appoint an arbitrator by written notice to the Initiating Party, and the two (2) arbitrators so appointed shall thereupon meet and select a third arbitrator acceptable to both. In the event that the Responding Party fails to appoint an arbitrator within the time limit aforesaid and deliver notice thereof to the Initiating Party, then the arbitration shall proceed before the arbitrator appointed by the Initiating Party who shall act as sole arbitrator. In the event that the two (2) arbitrators so appointed are unable to agree upon a third arbitrator, then the Initiating Party shall be entitled to make application pursuant to the Arbitration Act (as amended, re-enacted or replaced, from time to time), for selection of a third arbitrator, and the provisions of the Arbitration Act shall govern such selection.

The resultant arbitration panel shall thereupon proceed to hear the submissions of the parties and shall render a decision within thirty (30) days after the appointment of the third

arbitrator. The decision of a majority of the arbitration panel shall be deemed to be the decision of the arbitration panel, and such decision shall be final and binding upon the parties and not subject to appeal. The arbitration panel shall have the authority to assess the costs of the arbitration panel against either or both of the parties; provided, however, that each party shall bear its own witness and counsel fees.

1.23 Cost of Landlord's consents

Whenever any approval, consent, execution of documents or any other act or action whatsoever is required or requested from the Landlord by the Tenant hereunder, any and all costs, including reasonable legal fees, incurred by the Landlord shall be at the expense of the Tenant and shall be payable by the Tenant by way of additional rent hereunder.

ARTICLE 2 - DEMISE AND WORK

2.1 Demise

The Landlord, in consideration of the rents, covenants and agreements hereinafter reserved and contained on the part of the Tenant to be paid, observed and performed, does demise and lease unto the Tenant the Premises and all rights and appurtenances thereunto appertaining subject to the Permitted Encumbrances.

2.2 Term

The Tenant shall have and hold the Premises for the Term subject to the terms and conditions of this Lease.

2.3 Renewal

The Tenant may renew/extend the Term for the Renewal Periods which shall be on the Renewal Terms and Conditions. To exercise this right, the Tenant must give written notice to the Landlord not less than six (6) months prior to the expiry of the original Term or the expiring Renewal Period. Either party may terminate this Lease at the end of the Term or the end of any Renewal Period upon six (6) weeks prior notice, prior to the expiry of the Term or any Renewal Period.

2.4 Landlord's Work

The Landlord shall undertake the Landlord's Work in a good workmanlike manner with all due dispatch in accordance with all applicable laws as soon as commercially reasonable and not later than May 1, 2020 subject to the terms hereof.

2.5 Tenant's Work

The Tenant shall be responsible for the following:

- (a) Provide all necessary business plan and design information to the Landlord for approval by MBQ Chief and Council;

- (b) Provide full grading and under asphalt design excavation needs to the Landlord by January 30,2020;
- (c) Payment of hydro, water and sewage connection costs;
- (d) Building costs, equipment costs and all other capital required to develop the Business on the Premises;
- (e) Security for the Premises throughout the Term;
- (f) All lighting requirements;
- (g) All monthly utility costs throughout the Term;
- (h) Engineering costs prior to the Effective Date of the Lease;
- (i) Environmental consultations if required;
- (j) Hire Buildall to do the site preparation work to have the site ready to a level grade as more particularly described in schedule 2 attached at the cost of the Tenant and in addition work with Buildall, a business owned by Tom Maracle during the build process to utilize Buildall's resources as needed;
- (k) Develop report of activity to satisfy documentation of monthly Additional Rent; and
- (l) Maintain insurance policies as set out in section 6.1.

All such work (the "Tenant's Work") shall be undertaken in accordance with the terms hereof and in accordance with all applicable laws and regulations.

ARTICLE 3 - RENT

3.1 Rent

The Tenant shall pay to the Landlord during the Term in advance of the first day of each month a fixed monthly amount (the "Basic Rent") equal to the sum of Two Thousand, Two Hundred and Eighty dollars (\$2,280.00). If the Commencement Date is a date other than the first day of a month, the Tenant shall pay on such date the rent for such partial month pro-rated on a daily basis.

3.2 Additional Basic Rent

The Tenant shall pay One Cent (\$.01) per litre of fuel shipped from the Premises per calendar month within fifteen (15) Business Days of the end of the previous calendar month (the "Additional Basic Rent") for the duration of the Term. Along with the Additional Basic Rent, the Tenant shall provide a monthly activity report to the Landlord, which shall show the Tenant's

invoices for all fuel shipped from the Premises for the preceding calendar month excluding only fuel sold and delivered to Green Energy.

3.3 Additional Rent

All other actual charges payable with respect to the Premises, for which invoices are provided, including all utility costs, repairs, lighting requirements, maintenance and taxes, which shall be exempt from HST, shall be payable by the Tenant as "Additional Rent". In addition the Tenant shall pay directly any other actual charges payable with respect to the Premises.

3.4 Rent Increases

- (a) For each successive Lease Year commencing on the anniversary of the Commencement Date, any increases to the Basic Rent payable by the Tenant as provided for under paragraph 3.1 shall be as agreed upon between the Landlord and the Tenant and, failing agreement within thirty (30) days after the commencement of the then current Lease Year, the Basic Rent shall increase annually by the same percentage increase as the increase in the Commercial Price Index for Canada (all items) ("CPI")
- (b) There shall be no increases to the Additional Basic Rent rate of one cent (\$0.01) per litre for the duration of the Term until such time as the price per litre exceeds the price per litre at the Commencement Date by more than 50% when the one cent shall then increase annually at the increase in CPI .

3.4 Payment of Rent

All payments made to the Landlord shall be made in lawful money of Canada and shall be paid to the Landlord at the Landlord's address for service of notices or to such other party and/or to such other address as the Landlord may from time to time designate in writing to the Tenant. All Rent shall be paid without prior demand, set off or deduction.

ARTICLE 4 - USE AND OCCUPANCY

4.1 Use

The Premises may be used by the Tenant only for the Permitted Use. In conducting the Tenant's Business on the Premises, the Tenant shall conform to all applicable laws, regulations and licensing requirements. The Tenant shall not apply for any amendments to any official plans, band by-laws, regulations or restrictions governing the Premises which could reasonably be said to have the effect of materially lessening the value of the Premises.

4.2 Improvements on Premises

Other than completion of the Tenant's Work, as set out in section 2.5, the Tenant shall not be entitled at any time to construct, renovate, alter, expand, replace, demolish all or any part of a building or buildings upon the Premises without the Landlord's prior written consent which may not be unreasonably withheld.

4.3 Easements and Agreements

The Tenant shall comply with all covenants and restrictions that may run with or attach to the Premises including the obligations under the Permitted Encumbrances.

4.4 Surrender of Possession

At the expiration or other termination of the Lease, the Tenant will surrender to the Landlord the Premises in good and substantial order and repair. The Tenant shall remove from the Premises immediately prior to the expiration of the Lease all items owned by the Tenant or by others and remove all debris.

4.5 Construction Liens

If at any time during the Term any liens of mechanics, labourers or material men shall be filed against the Landlord's interest in the Premises or any part thereof, except for any liens which have resulted from any action of the Landlord, the Tenant shall, at its expense, cause such liens to be discharged by payment, bonding or otherwise, within thirty (30) days after the Tenant receives notice that any such liens were filed. The Tenant shall also defend for the Landlord, at the Tenant's expense, any action, suit or proceeding which may be brought on for the enforcement of any such lien (except for any such lien as may result from any action of the Landlord) and shall pay damages and satisfy and discharge any judgment entered in such action, suit or proceeding and save the Landlord harmless from any liability, claim or damages and expenses (including reasonable legal fees) resulting therefrom. If the Tenant fails to obtain the discharge, as aforesaid, of any such lien, the Landlord may procure the discharge thereof by bonding or payment or otherwise (regardless of the validity of such lien), and all costs and expenses (including reasonable legal fees) to which the Landlord may be put in obtaining such discharge shall be paid by the Tenant to the Landlord as Rent, including interest on any amounts so paid or incurred by the Landlord calculated at the Stipulated Rate of Interest from the date of payment by the Landlord to the date of repayment by the Tenant.

4.6 Encumbrances

The Tenant shall not create any mortgage, security interest, or any other encumbrance whatsoever against the Premises, including without limitation, in respect of the Tenant's Work, nor shall the Tenant encumber the Lease in any manner whatsoever. If any encumbrance of any kind, including an encumbrance arising as a result of any dealings between the Tenant and a third party(s) shall at any time be filed against the Premises, the Tenant shall cause the same to be discharged within thirty (30) days after same is brought to the attention of the Tenant. If the Tenant shall fail to discharge such encumbrance within such period then in addition to any other right or remedy of the Landlord, the Landlord may, but shall not be obligated to, institute such action as may be necessary to discharge the said encumbrance. All costs and expenses incurred by the Landlord in this regard, including legal fees on a solicitor and client basis, shall be repaid by the Tenant to the Landlord on demand and shall be added as Rent.

4.7 Maintenance

The Tenant shall, at its own expense, maintain the Premises in good and clean order and condition and shall promptly make all necessary or appropriate repairs. The Tenant shall carry out such maintenance and repair in accordance with all applicable laws, regulations and licensing requirements. The Landlord shall not be required to maintain, alter or repair the Premises or any part thereof in any way, except as provided herein, and the Tenant expressly waives the right to make any such repairs at the expense of the Landlord which may be provided for in any law now in effect or hereinafter enacted.

ARTICLE 5 - FINANCING

5.1 Equipment

The Landlord acknowledges that some of the equipment, fixtures and furniture (collectively designated herein as "**Trade Equipment**"), now or hereafter to be installed by the Tenant in and used by the Tenant upon the Premises, may or will be directly financed by a lender or owned by an equipment rental company ("**Equipment Lessor**") and leased to the Tenant either directly from the Equipment Lessor or by way of equipment sublease or assignment of equipment lease from an equipment sublessor, and the Landlord hereby agrees to recognize the rights therein of any such lender or Equipment Lessor or equipment sublessor (or assignee). The Landlord agrees that all such items of financed or leased Trade Equipment installed or to be installed on the real property constituting the Premises shall be and remain personal property and not real property, notwithstanding the fact that the same may be nailed or screwed or otherwise attached or affixed to such real property, and further agrees to recognize the rights therein of any such lender or Equipment Lessor or equipment sublessor (or assignee). The Tenant shall have the right at any time to remove or replace any and all such financed or leased Trade Equipment regardless of whether annexed or attached to the Premises, and to the extent of their respective interests therein, such lender or Equipment Lessor or equipment sublessor (or assignee) shall also have such a right. Any damage to the Premises caused by such a removal shall be repaired by and at the expense of the Tenant or other party removing it. The Landlord waives any claim arising by reason of any Landlord's lien or otherwise with respect to the financed or leased Trade Equipment or to Trade Equipment upon which the Tenant has granted a security interest to a bona fide lender, and agrees that any such lender or Equipment Lessor or equipment sublessor (or assignee) may remove and dispose of the same without reference to, and free and clear of, any or other demand of the Landlord, provided that said disposal or sale shall not be made on the Premises.

ARTICLE 6 - INSURANCE

6.1 Tenant's Insurance

- (a) The Tenant shall carry, at its cost, comprehensive environmental and general liability insurance, which coverage shall include the Business operations conducted by the Tenant and any other person on the Premises. Such policies shall be written on a comprehensive basis with coverage for any one occurrence or claim of not less than five million dollars (\$5,000,000).

- (b) The Tenant shall carry, at its cost "All Risks" insurance upon property of every description and kind owned by the Tenant on the Premises, for which the Tenant is legally liable, or which is installed by or on behalf of the Tenant on the Premises, including, without limitation, stock in trade, furniture, equipment, Trade Equipment, in an amount not less than the full replacement cost thereof from time to time.
- (c) The Tenant shall carry, at its cost, pollution liability insurance covering spills on, in or under the Premises in an amount not less than five million dollars (\$5,000,000.00) per occurrence.

6.2 Policy Requirements

Each policy of insurance taken out by the Tenant in section 6.1 shall be:

- (a) in such form and on such terms as are satisfactory to the Landlord; and
- (b) include the Landlord as additional named insureds, as their respective interests may appear.

6.3 Certificates

The Tenant shall furnish the Landlord with certificates showing the insurance required under section 6.1 to be in effect. All such insurance shall be at the cost and expense of the Tenant. Such certificates shall include a provision for thirty (30) days' advance written notice by the insurer to the Landlord and any mortgagee in the event of any pending change or cancellation of such insurance. If the Tenant shall fail to maintain such insurance, the Landlord may at its election procure the same, adding the premium cost to the Rent next due. The payment by the Landlord of any such premium shall not be deemed to waive or release the default of the Tenant in the payment thereof.

6.4 Tenant to Rebuild

Subject to the provisions of section 8.4, if, during the Term, any building or improvement upon the Premises is damaged or destroyed, the Tenant shall, at its cost, repair or restore the same to a state equal to or better than the condition of such building or improvement immediately prior to the casualty. All insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration. If the insurance proceeds shall be insufficient for said purpose, the Tenant shall pay such deficiency.

6.5 Damage During Last Year of Term

If, during the last year of the Term or any Renewal Period, any improvements on the Premises are damaged so that the cost of repairing or replacing the same shall equal or exceed twenty percent (20%) of the fair market value of the improvements as reasonably estimated by the Landlord's Architect, the Tenant shall have the option, upon written notice given within thirty (30) days after such casualty:

- (a) to repair or restore such damaged improvements; or
- (b) to terminate this Lease by written notice thereof to the Landlord. The Tenant's option to terminate shall be conditional upon the Tenant's doing such work so as to restore the Premises to their condition prior the Commencement Date. The Tenant shall assign to the Landlord the Tenant's rights to the insurance proceeds payable on account of such casualty free and clear of any encumbrances or other claims. This Lease shall terminate upon receipt by the Landlord of said notice, good and valid assignment of insurance proceeds and payment by the Tenant to the Landlord of all rents and other amounts owing to the Landlord under this Lease to the date of termination and completion of such work. The Premises and all improvements remaining on the Premises shall be surrendered to the Landlord.

6.6 No Termination

" Subject to the provisions of section 6.5, no destruction of or damage to the Premises or other personal property on the Premises or any part thereof by fire or other casualty whatsoever, whether such damage or destruction be partial or total, shall permit the Tenant to surrender or terminate this Lease or relieve the Tenant from its obligation to pay in full the Rent and other sums and charges payable by the Tenant hereunder or from any other obligation under this Lease.

ARTICLE 7 - ASSIGNMENT

7.1 No Assignment by Tenant

The Tenant acknowledges and agrees that the tenancy/leasehold interest of the Tenant under the Lease are, in effect, personal to the Tenant. The use permitted hereunder is, in the sole discretion of the Landlord. As such, the Tenant covenants and agrees that it shall not assign, transfer, sublet or otherwise part with possession of the Premises in whole or in part, in any manner whatsoever without the prior written consent of the Landlord, which consent may be arbitrarily and unreasonably withheld in the Landlord's sole and absolute discretion.

7.2 Landlord Assignment

If the Landlord assigns its rights as Landlord of the Premises, to any assignee, the Landlord shall without further written notice or otherwise be relieved of any of its covenants or obligations hereunder.

7.3 Parties Bound

The Lease and anything herein contained shall extend to, bind and enure to the benefit of the successors and assigns of each of the parties hereto, subject to the consent of the Landlord being obtained, as provided in the Lease, to any assignment or sublease by the Tenant, and where there is more than one (1) Landlord or Tenant, or where the Landlord or Tenant is a male, female, a partnership or a corporation, the provisions herein shall be read with all grammatical changes thereby rendered necessary. All covenants herein contained shall be deemed joint and

several and all rights and powers reserved to the Landlord may be exercised either by the Landlord or its agents or representatives.

7.4 Transfer of Reversionary Interest by Landlord

Nothing in this Lease prohibits or restricts the Landlord from selling, assigning, transferring, mortgaging, encumbering or otherwise dealing with the whole or any part of its reversionary interest in the Premises (subject to this Lease) and all of its rights, title and interest in this Lease.

ARTICLE 8 - DEFAULT

8.1 Default

Notwithstanding anything contained in any present or future laws to the contrary, if and whenever:

- (a) the Tenant fails to pay any Rent, Additional Rent or any other sums due hereunder on the day or dates appointed for the payment thereof (provided the Landlord first gives five (5) days' written notice to the Tenant of any such failure); or
- (b) the Tenant fails to observe or perform any other of the terms, covenants or conditions of this Lease to be observed or performed by the Tenant (other than the terms, covenants or conditions set out below in subparagraphs (c) to (j) inclusive, for which no notice shall be required) provided the Landlord first gives the Tenant fourteen (14) days, or such shorter period of time as is otherwise provided herein, notice of any such failure to perform and the Tenant, within such period, fails to commence diligently and thereafter to proceed diligently and continuously to cure any such failure to perform; or
- (c) the Tenant or any Person occupying the Premises or any part thereof or any licensee, concessionaire or franchisee operating a business in the Premises becomes bankrupt or takes benefit of any act now or hereafter in force for bankrupt debtors or files any proposal or makes any assignment for the benefit of creditors or any arrangement or compromise; or
- (d) a receiver or a receiver and manager is appointed for all or a portion of the Tenant's property or any such occupant's, licensee's, concessionaire's or franchisee's property and such appointment is not discharged within twenty (20) days; or
- (e) any steps are taken or any action or proceedings are instituted by the Tenant or by any other party, including, without limitation, any court or governmental body of competent jurisdiction for the dissolution, winding-up or liquidation of the Tenant or its assets other than pursuant to a corporate reorganization; or

- (f) the Tenant makes a sale in bulk of any of its assets, wherever situated (other than a bulk sale made to a Transferee permitted under this Lease); or
- (g) the Tenant sells or disposes of its goods, trade equipment, equipment or chattels or removes or commences, attempts or threatens to remove them from the Premises so that in the Landlord's opinion there would not in the event of such sale, disposal or removal be sufficient goods of the Tenant on the Premises subject to distress to satisfy all Rent due or accruing hereunder for a period of at least six (6) months; or
- (h) the Tenant effects a Transfer that is not permitted by this Lease; or
- (i) this Lease or any of the Tenant's assets on the Premises are taken under any writ of execution, chattel mortgage, charge, debenture or other security instrument; or
- (j) re-entry is permitted under any other terms of this Lease;

then, in addition to any and all other rights, including the rights referred to herein, the full amount of the current month's instalment of Rent, including, without limitation, the payment of Additional Rent and any other payments required to be made monthly hereunder, together with the next three (3) months' instalments of Rent, Additional Rent and the aggregate of such payments for the next three (3) months, all of which shall be deemed to be accruing due on a day-to-day basis, shall immediately become due and payable as accelerated Rent, and the Landlord may immediately distrain for the same, together with any Rent arrears then unpaid. For the purposes of this section 8.1, Additional Rent shall be calculated based on a monthly average of the Additional Rent paid in the six (6) months preceding a default arising under section 8.1.

8.2 Re-Entry

In addition to any other rights or remedies the Landlord has pursuant to this Lease or at law, and in the event of any default listed in section 8.1 herein, the Landlord has the immediate right of re-entry upon the Premises and it may repossess the Premises and enjoy them as of its former estate, and the Tenant hereby consents that the Landlord may expel all Persons and remove all property from the Premises. Such property may be removed and sold or disposed of by the Landlord by public auction or otherwise, and either in bulk or by individual item, all as the Landlord in its sole discretion may decide (and the Tenant acknowledges and agrees that the proceeds of such sale or disposition shall be applied by the Landlord in its sole discretion) or may be stored in a public warehouse or elsewhere at the cost and for the account of the Tenant, all without service of notice or resort to legal process and without the Landlord being considered guilty of trespass or becoming liable for any loss or damage which may be occasioned thereby or for any claim for damages. The Tenant hereby irrevocably waives the benefit of any present or future laws which in any way may limit or diminish the Landlord's right to terminate this Lease or re-enter into possession of the Premises in pursuance of its rights or remedies as set forth in this Lease. Notwithstanding any other provisions of this Lease, the Landlord shall have an affirmative obligation to mitigate its damages and relet the Premises.

8.3 Termination

Except for the terms, covenants or conditions set out above in subparagraphs 8.1 (c) to (j) inclusive, for which no notice shall be required, in the event of default by the Tenant or at any time during the continuance of such default, in addition to (and not by way of limitation of) any other remedies the Landlord may have under this Lease or at law, the Landlord may elect to terminate this Lease by giving fourteen (14) days written notice thereof to the Tenant, and upon such termination, the Landlord may then or at any time thereafter:

- (a) re-enter and take possession of the Premises or any part thereof and may expel or remove the Tenant and any other Person from the Premises without service of notice or resort to any legal proceedings and without being deemed guilty of any trespass or becoming liable for any loss or damage which may be occasioned thereby; or
- (b) bring an action for summary possession of the Premises or any part thereof as provided by law;

all without prejudice to any other remedy or right of action which the Landlord may have for Rent or other breach of this Lease.

8.4 Survival of Rights

Notwithstanding any termination of this Lease or re-entry upon the Premises by the Landlord and without limiting the Landlord's right to other damages, the Tenant shall remain liable to the Landlord for damages for breach of the Tenant's covenants under this Lease.

8.5 No Waiver after Settlement

If proceedings shall at any time be commenced by the Landlord for recovery of possession and compromise or settlement shall be effected, either before or after judgment whereby the Tenant shall be permitted to retain possession of the Premises, then such proceedings shall not constitute a waiver of any covenant or condition of this Lease or of any subsequent breach thereof or a release of any liability or obligation of the Tenant therefor.

8.6 Surrender of Possession

If the Lease is terminated in any manner, the Premises shall be placed by the Tenant in the same condition as that in which the Tenant has agreed to surrender them at the expiration of the Term, but subject, if then applicable, to the effects of any prior expropriation.

8.7 Costs of Completion

In the event of the termination of the Lease for default of the Tenant hereunder prior to the completion by the Tenant of repair or restoration of damage or destruction of any buildings and improvements by reason of fire or other casualty, the Landlord's damages hereunder shall include, in any case in which the Tenant was obligated under the Lease to make and complete

such repair or restoration, the amount of any excess of the cost of completion of such repair or restoration over the net fire insurance proceeds available to the Landlord.

8.8 Remedies Cumulative

In the event of default, the Landlord's remedies under this Lease shall be cumulative and no remedy expressly provided for herein shall be deemed to exclude any other remedy allowed by law or equity or statute or otherwise or by other provisions of this Lease.

8.9 Waiver of Distress

The Landlord may distrain and the Tenant waives and renounces the benefit of any present or future statute taking away or limiting the Landlord's right of distress and covenants and agrees that, notwithstanding any such statute, except as provided in section 5.1, none of the goods and chattels of the Tenant on the Premises at any time during the Term shall be exempt from levy by distress for Rent, Additional Rent or any other charges.

ARTICLE 9 – ENVIRONMENTAL

9.1 Environmental Compliance

- (a) The Tenant shall conduct all of its operations on the Premises in strict compliance with all Environmental Laws and shall not cause or permit to be caused by any act, practice or omission or by negligence or otherwise any adverse effect, as such Terms may be defined or applied under Environmental Laws from time to time. Without limiting the generality of the foregoing, the Tenant shall obtain all licences, permits, registrations, certificates of approvals and approvals required under all Environmental Laws for its Business on the Premises.
- (b) The Tenant shall provide copies to the Landlord of all licences, permits, certificates of approval, approvals and generator registrations required hereunder within ten (10) days of demand therefor by the Landlord, provided that receipt or review of same by the Landlord shall not obligate the Landlord to take any action hereunder with respect to any conditions on the Premises.
- (c) The Tenant shall comply with all applicable laws including, without limitation, ensuring adequate secondary containment for any spills is constructed around any above-ground or underground storage tanks required for the Tenant's Business on the Premises.
- (d) The Tenant shall notify the Landlord promptly of any event or occurrence that has given, or is likely to give, rise to a report, order, inquiry investigation under Environmental Laws or a violation of Environmental Laws, including any Release, spill, emission, leaking, pumping, injection, deposit, disposal, discharge, dispersal, leaching or migration of a Hazardous Substance into, on, under, from or about the Premises, air and surface and ground water.

- (e) The Tenant shall not permit any waste to accumulate at the Premises and shall ensure all such waste is removed by a licensed hauler in compliance with all Environmental Laws.
- (f) The Tenant shall not cause or permit any environmental damage or Microbial Matter, in, under, on or about the Premises.

9.2 Remediation

- (a) The Tenant shall prior to the Commencement Date, at the Tenant's expense cause a Phase II environmental, and/or industrial hygiene and/or human health site assessment (the "ESA") of the Premises to be conducted by an environmental or human health consultant, as the case may be (the "Consultant") selected by the Tenant, which shall include, inspection of the Premises and the operations of the Tenant, drilling bore holes, monitoring wells or test pits and testing samples therefrom. The parties acknowledge that the Tenant has commissioned an ESA for the Premises prior to the Commencement Date which shall form a baseline of the environmental status of the Premises. The Landlord shall retain and bear all liability relating to such status as at the Commencement Date. The Landlord represents and warrants to the best of its knowledge that the Premises comply with all Environmental Laws as at the Commencement Date. The ESA shall be addressed to both the Landlord and the Tenant.
- (b) After the Commencement the Tenant shall, on thirty (30) days notice, if reasonably required, and at the end of the Term at the Tenant's expense, cause a Phase II environmental, and/or industrial hygiene and/or human health site assessment (the "ESA") of the Premises to be conducted by an environmental or human health consultant, as the case may be (the "Consultant") selected by the Landlord which shall include, inspection of the Premises and the operations of the Tenant, drilling bore holes, monitoring wells or test pits and testing samples therefrom, reviewing records maintained by government officials in relation to compliance of the Tenant with Environmental Laws, reviewing records maintained by the Tenant and interviewing the Tenant's employees. The Tenant shall forthwith perform all Remediation and decommissioning recommended by the ESA to restore the Premises to the condition which existed on the Commencement Date. The ESA shall be addressed to both the Landlord and the Tenant.
- (c) Prior to the expiration of the Term, the Tenant shall restore the Premises to the condition which existed on the Commencement Date including the removal of its Trade Equipment. Without limiting the generality of the foregoing, prior to the expiration of the Term, the Tenant shall Remediate and decommission the Premises so that no Hazardous Substances remain therein, thereon or thereunder in excess of the applicable standards for industrial/commercial sites in a full depth clean-up under applicable Environmental Laws and the Tenant shall reconstruct and restore all parts of the Premises necessitated in connection therewith.

9.3 Environmental Indemnity

The Tenant shall indemnify and save harmless the Landlord from and against any and all losses, claims, actions, damages, liabilities, penalties and expenses (including consultants' fees and legal fees on a solicitor and client basis) in connection with loss of life, personal injury, damage to property, Remediation required, compliance with government orders or Environmental Laws, or any other loss or injury arising from a breach of the Tenant of its obligations hereunder or upon the presence, release or discharge of Hazardous Substances into, under, upon, from or about the Premises. The indemnity shall survive the expiry or termination of this Lease.

IN WITNESS WHEREOF the parties hereto have executed this Lease.

Tom Maracle

Per: 

Title: Landlord

**Original Traders Energy Limited Partnership by its
general partner, Original Traders Energy Ltd.**

Per: 

Name: Glenn Page

Title: President

I have authority to bind the general partner

Schedule 1

ADDENDUM**TO THE LEASE MADE ON FEBRUARY 18, 2020****BETWEEN:**

Tom Maracle

(referred to herein as the “**Landlord**”)

- and -

Original Traders Energy Limited Partnership

(the “**Tenant**”)(collectively referred to herein as the “**Parties**”)**WHEREAS:**

1. The Landlord and the Tenant signed a lease on February 18, 2020, in respect of two properties located in the Tyendinaga Industrial Park on Tyendinaga Mohawk Territory (the “**Premises**”);
2. The Landlord is the owner of the Premises pursuant to Certificates of Possession numbers 403018621 and 403018622;
3. Pursuant to the lease dated February 18, 2020, the Tenant occupies the Premises and operates a blending site for fuel distribution at the Premises;
4. As a result of an oversight, in the version of the lease signed by the Landlord and the Tenant on February 18, 2020, the Schedule 1 of the lease, intended to include the description of the Premises subject to the lease, was left blank;

NOW THEREFORE the Parties hereby agree as follows:

1. The legal description of the Premises is as follows:

Lots 11 and 12, Tyendinaga Industrial Park, Tyendinaga Mohawk Territory, as shown on Plan No. 95029, Canada Lands Surveys Record.
2. This Addendum is in force as of the Commencement Date of the lease signed by the Parties on February 18, 2020 (even though this Addendum has been signed subsequent to the Commencement Date).

3. This Addendum forms part of the lease signed by the Parties on February 18, 2020, and the lease signed by the Parties on February 18, 2020 shall be interpreted for all purposes as if the legal description of the Premises set out in section 1 of this Addendum had been included within Schedule 1 of the lease on the date that it was signed by the Parties.

IN WITNESS WHEREOF the Parties hereto have executed this Addendum.

Tom Maracle

Per: 

Title: Landlord

Signed this 24 day of September, 2021

**Original Traders Energy Limited Partnership by its
general partner, Original Traders Energy Ltd.**

Per: 

Name: Glenn Page

Title: President

Signed this 24 day of September, 2021

I have authority to bind the general partner.



MOHAWKS OF THE BAY OF QUINTE
KENHTEKE KANYEN'KEHÁ:KA

ADMINISTRATION, 24 Meadow Drive, Tyendinaga Mohawk Territory, ON K0K 1X0
 Phone 613-396-3424 Fax 613-396-3627

MOHAWK COUNCIL RESOLUTION

Chronological No.:	2021/22-040
File Reference:	

NOTE: The words "From our First Nations Funds, "Capital" or "Revenue", whichever is the case, must appear in all resolutions requesting expenditures from First Nations Funds.

THE COUNCIL OF THE: MOHAWKS OF THE BAY OF QUINTE	Current Capital Balance	\$
DISTRICT ONTARIO REGION SOUTH	Committed	\$
PROVINCE ONTARIO	Current Revenue Balance	\$
PLACE TYENDINAGA MOHAWK TERRITORY #38	Committed	\$
DATE 1 September 2021 Date Month Year		

DO HEREBY RESOLVE:

Moved by: Lynda Leween

Seconded by: Carl E. (Ted) Maracle

WHEREAS the Mohawks of the Bay of Quinte have the existing and inherent right of self-determination, which includes the inherent jurisdiction over their lands, peoples and territory;

AND WHEREAS the Mohawks of the Bay of Quinte have aboriginal and treaty rights, and other rights and freedoms that are recognized and affirmed in the Constitution of Canada, which include the inherent right of self-determination and jurisdiction over their lands, peoples and territory;

AND WHEREAS the Tyendinaga Mohawk Council is the community government within the Tyendinaga Mohawk Territory and has inherent jurisdiction to make laws, regulations and policies to meet the needs and concerns of the Mohawks of the Bay of Quinte;

AND WHEREAS the Tyendinaga Mohawk Council intends to preserve the cultural, political and economic integrity of the Mohawk Territory and community of Tyendinaga;

AND WHEREAS the Tyendinaga Mohawk Council is striving to create an environment conducive to the establishment of economic development within the Tyendinaga Mohawk Territory;

A quorum for this First Nation
 Consists of 3
 Council Members

Donald Maracle
 Chief R. Donald Maracle

Josh Hill
 Councillor Josh Hill

Lynda Leween
 Councillor Lynda Leween

Carl E. (Ted) Maracle
 Councillor Carl E. (Ted) Maracle

FOR DEPARTMENT USE ONLY

1. First Nation Code	2. COMPUTER BALANCES		3. Expenditure	4. Authority Indian Act See	5. Source of Funds <input type="checkbox"/> Capital <input type="checkbox"/> Revenue
	A. Capital \$	B. Revenue \$			
6. Recommended			Approved		
Date _____ Recommending Officer _____			Date _____ Approving Officer _____		



MOHAWKS OF THE BAY OF QUINTE
KENHTEKE KANYEN'KEHÁ:KA

ADMINISTRATION, 24 Meadow Drive, Tyendinaga Mohawk Territory, ON K0K 1X0
 Phone 613-396-3424 Fax 613-396-3627

Page 2 of 2

MOHAWK COUNCIL RESOLUTION

Chronological No.: 2021/22-040
File Reference:

NOTE: The words "From our First Nations Funds, "Capital" or "Revenue", whichever is the case, must appear in all resolutions requesting expenditures from First Nations Funds.

THE COUNCIL OF THE: MOHAWKS OF THE BAY OF QUINTE	Current Capital Balance	\$
DISTRICT ONTARIO REGION SOUTH	Committed	\$
PROVINCE ONTARIO	Current Revenue Balance	\$
PLACE TYENDINAGA MOHAWK TERRITORY #38	Committed	\$
DATE 1 September 2021 Date Month Year		

AND WHEREAS as part of creating an environment conducive to economic development, the Mohawks of the Bay of Quinte businesses wish to enter into contractual agreements with product suppliers;

AND WHEREAS as a condition of the contract, the supplier requires a Resolution from the Council to enter the "Territory";

AND WHEREAS Tom Maracle and his associated company Original Traders Energy, has requested that Council pass this Resolution and agrees to its content.

THEREFORE BE IT RESOLVED THAT the Tyendinaga Mohawk Council hereby grants The Royal Bank of Canada and its agents and assigns the right to enter upon the Tyendinaga Mohawk Territory for the specific purpose of the contract, with Tom Maracle and his associated company Original Traders Energy to access any assets directly related to the aforesaid contract between Tom Maracle and his associated company Original Traders Energy and The Royal Bank of Canada.

AND BE IT FURTHER RESOLVED THAT this right of access shall not be withdrawn without the prior written agreement of both The Royal Bank of Canada or its assigns and the Tyendinaga Mohawk Council

Carried.

A quorum for this First Nation Consists of 3 Council Members
--

Donald Maracle
Chief R. Donald Maracle

Josh Hill
Councillor Josh Hill

Lynda Leween
Councillor Lynda Leween

Carl E. (Ted) Maracle
Councillor Carl E. (Ted) Maracle

FOR DEPARTMENT USE ONLY

1. First Nation Code	2. COMPUTER BALANCES		3. Expenditure	4. Authority Indian Act See	5. Source of Funds <input type="checkbox"/> Capital <input type="checkbox"/> Revenue
	A. Capital \$	B. Revenue \$			
6. Recommended			Approved		
Date			Date		
Recommending Officer			Approving Officer		

CERTIFICATE AS TO AGREEMENTS

TO ALL LAWYERS, Gowling WLG (Canada) LLP

AND TO ROYAL BANK OF CANADA ("RBC")

RE Credit facilities established in favour of Original Traders Energy LP (the "**Borrower**") pursuant to a loan agreement dated July 6, 2021 between Royal Bank of Canada (the "**Lender**"), as lender, and the Borrower, as borrower, (as the same may be amended, modified, supplemented, extended, renewed, restated or replaced from time to time, the "**Credit Agreement**")

DATE October 15, 2021

I, Glen Page, President of Original Traders Energy Ltd., hereby certify on behalf of Original Traders Energy LP, in my capacity as an officer of its general partner, and not in my personal capacity, as follows:

1. Annexed hereto as Schedule "B" is a true and complete copy of each of the documents referred to in Schedule "A" attached hereto (each individually, a "**Document**").
2. Each Document is in full force and effect as of the date hereof.
3. There have been no further amendments to, alterations of, termination of or variations in or to any Document.
4. There is no other agreement, instrument, document or understanding which supersedes any Document.

I make these representations, warranties and certifications knowing that the Lender will be acting in reliance thereon in continuing to extend the credit facilities to the borrowers pursuant to the Credit Agreement.

DATED as of the date first written above.

Name: _____

SCHEDULE "A"
LIST OF DOCUMENTS

1. Lease dated February 18, 2020 between Tom Maracle, as landlord, and Original Traders Energy Limited Partnership, as tenant, (the "Lease")
2. Addendum to the Lease made on February 18, 2020

A handwritten signature in black ink, appearing to be the initials 'JW' or similar, located in the lower right quadrant of the page.

SCHEDULE "B"
COPIES OF DOCUMENTS

See attached.

A handwritten signature in black ink, appearing to be the initials 'R/A' or similar, located in the bottom right corner of the page.

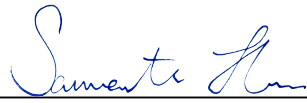
THIS IS **EXHIBIT "B"** TO THE
AFFIDAVIT OF ELIZABETH LALONDE

AFFIRMED BEFORE ME
this 2nd day of October, 2023



A Commissioner, etc.

This is Exhibit "K" of
the Affidavit of Scott Hill
Sworn before me this 27th day of January, 2023

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

A Commissioner, 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 extend 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.

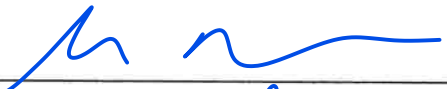
CHI-ZHINGWAAK BUSINESS PARK INC.

Per: 

Name: Craig Nootchari

Title: GiMaq

ORIGINAL TRADERS ENERGY LP

Per: 

Name: Glenn Page

Title: President

August 24, 2021

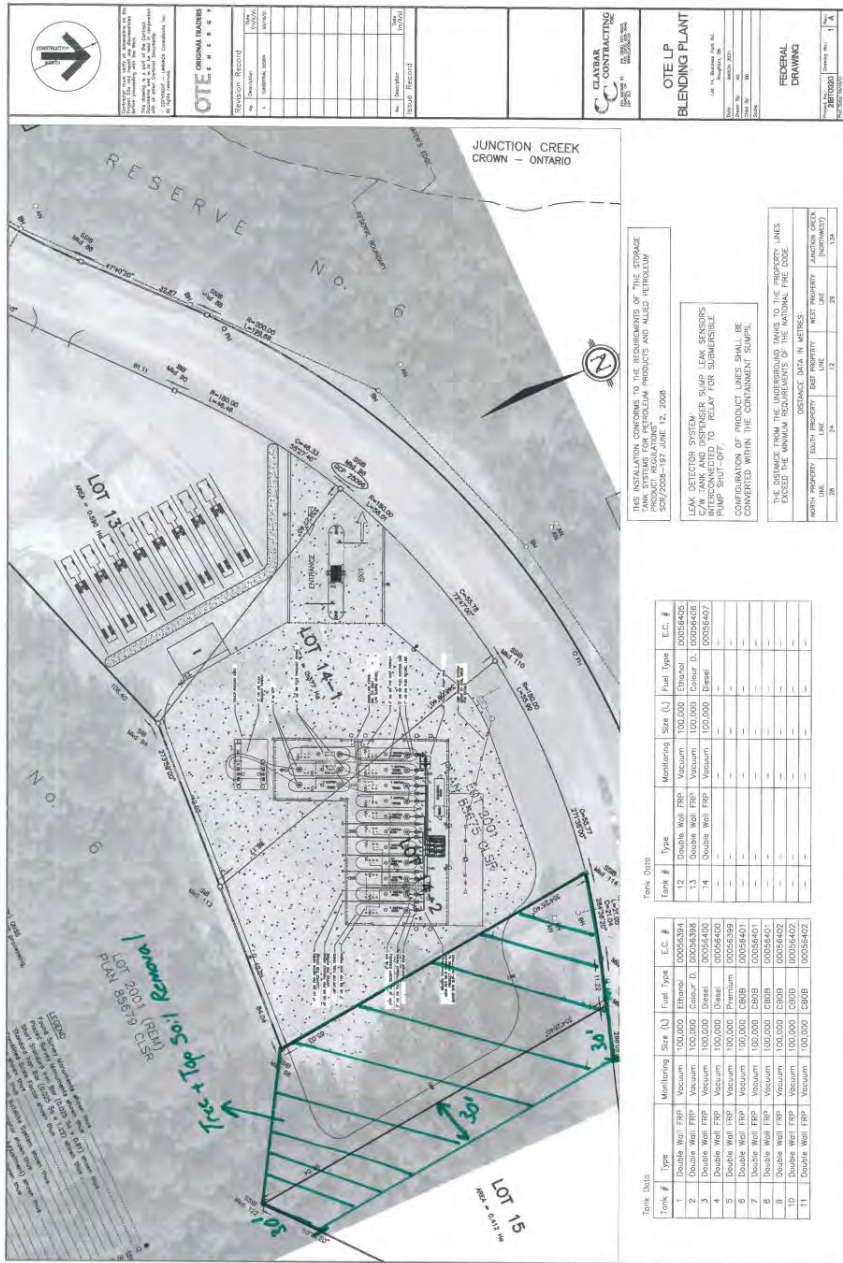
SCHEDULE A: RULES AND REGULATIONS FORMING PART OF THIS LEASE

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.

Schedule B:
Description of Premises





ATIKAMEKSHENG ANISHNAWBEK 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.

1 | Atikameksheng Anishnawbek Head Lease – Chi-Zhiingwaak Business Park

- 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.