

Estate Number: 31-  
Court File Number: 31-

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(IN BANKRUPTCY AND INSOLVENCY)**  
**COMMERCIAL LIST**

**AND IN THE MATTER OF THE NOTICE OF INTENTION TO  
MAKE A PROPOSAL OF DUNDEE ENERGY LIMITED PARTNERSHIP OF THE  
CITY OF TORONTO IN THE PROVINCE OF ONTARIO**

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**MOTION RECORD**  
**(First Day Order)**

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Date: 15 August 2017

**GOWLING WLG (CANADA) LLP**  
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Solicitors for DELP and DOGL

**TO: THE ATTACHED SERVICE LIST**

**SERVICE LIST**

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*Solicitors for the Proposal Trustee*

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# TAB 1

Estate Number: 31-  
Court File Number: 31-

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(IN BANKRUPTCY AND INSOLVENCY)  
COMMERCIAL LIST**

**AND IN THE MATTER OF THE NOTICE OF INTENTION TO  
MAKE A PROPOSAL OF DUNDEE ENERGY LIMITED PARTNERSHIP OF THE  
CITY OF TORONTO IN THE PROVINCE OF ONTARIO**

**NOTICE OF MOTION**

**DUNDEE ENERGY LIMITED PARTNERSHIP**, will make a motion to the Court on Wednesday, 16 August, 2017, at 10:00 a.m., or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

**PROPOSED METHOD OF HEARING:** The motion is to be heard orally.

**THE MOTION IS FOR:**

1. An Order substantially in the form of the draft order attached as **Schedule "A"**; and
2. Such further and other relief as this Honourable Court may deem just and equitable.

**THE GROUNDS FOR THE MOTION ARE:**

1. Grounds set forth in the Affidavit of Lucie Presot sworn on 14 August 2017.
2. Such further and other grounds as counsel may advise and this Honourable Court may accept.

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

1. The Affidavit of Lucie Presot sworn on 14 August 2017; and
2. Such evidence as this Honourable Court may permit.

Date: 15 August 2017

**GOWLING WLG (CANADA) LLP**

Barristers and Solicitors  
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Solicitors for the Debtor

# TAB A



# SCHEDULE "A"

D

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(IN BANKRUPTCY AND INSOLVENCY  
COMMERCIAL LIST**

THE HONOURABLE  
JUSTICE

)  
)  
)

WEDNESDAY, THE 16<sup>th</sup>  
DAY OF AUGUST, 2017

R

Estate Number:  
Court File No.:

**AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL  
OF DUNDEE ENERGY LIMITED PARTNERSHIP OF THE CITY OF TORONTO IN  
THE PROVINCE OF ONTARIO**

A

Estate Number:  
Court File No.:

**AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL  
OF DUNDEE OIL AND GAS LIMITED OF THE CITY OF TORONTO IN THE  
PROVINCE OF ONTARIO**

**ORDER**

**THIS MOTION**, made by Dundee Energy Limited Partnership (“DELP”) and Dundee Oil and Gas Limited (“DOLG”) for various relief pursuant to the *Bankruptcy and Insolvency Act* (Canada), R.S.C. 1985, c. B-3, as amended (the “BIA”), was heard this day at 330 University Avenue, Toronto, Ontario.

F

**ON READING** the affidavit of Lucie Presot sworn 14 August 2017 (the “Presot Affidavit”) and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel to DELP and Dundee Oil and Gas Limited (“DOGL” and together with DELP, “Dundee”), counsel for

T

FTI Consulting Canada Inc., in its capacity as the proposal trustee (the "**Proposal Trustee**") and counsel for the National Bank of Canada ("**National Bank**"), no one else appearing:

**D**  
**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.

**R**  
**ADMINISTRATIVE CONSOLIDATION**

2. **THIS COURT ORDERS** that the proposal proceedings of DELP (estate number [Number]) and DOGL (estate number [Number]) (collectively, the "**Proposal Proceedings**") be and are hereby administratively consolidated and the Proposal Proceedings are hereby authorized and directed to continue under the following joint title of proceedings:

**A**  
**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(IN BANKRUPTCY AND INSOLVENCY)**  
**COMMERCIAL LIST**

Estate Number:  
Court File No.:

**AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF DUNDEE ENERGY LIMITED PARTNERSHIP OF THE CITY OF TORONTO IN THE PROVINCE OF ONTARIO**

**F**  
Estate Number:  
Court File No.:

**AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF DUNDEE OIL AND GAS LIMITED OF THE CITY OF TORONTO IN THE PROVINCE OF ONTARIO**

3. **THIS COURT ORDERS** that all further materials in the Proposal Proceedings shall be filed with the Commercial List Office only in the DELP estate and court file (estate number [Number] and court file number [Number]) and hereby dispenses with further filing thereof in the DOGL estate and court file (estate number [Number] and court file number [Number]).

## APPROVAL OF THE SALE SOLICITATION PROCESS

4. **THIS COURT ORDERS** that the sale solicitation process (“**BIA SSP**”) attached hereto as **Schedule “A”** (subject to such non-material amendments as may be agreed to by National Bank and the Proposal Trustee) be and is hereby approved and the Proposal Trustee is hereby authorized and directed to take such steps as it deems necessary or advisable to carry out the BIA SSP, subject to prior approval of this Court being obtained before completion of any transaction(s) under the BIA SSP.

5. **THIS COURT ORDERS** that each of the Proposal Trustee and any Assistants (as defined below) retained by the Proposal Trustee shall have no personal or corporate liability with respect to any and all losses, claims, damages or liability of any nature or kind to any person in connection with or as a result of performing its duties under the BIA SSP (including, without limitation, through the disclosure of any and all information or documentation regarding Dundee, the Property or the Business (as such terms are defined herein below)), except to the extent such losses, claims, damages or liabilities result from the gross negligence or wilful misconduct of the Proposal Trustee or such Assistants, as determined by the Court.

6. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Proposal Trustee is hereby authorized and permitted to disclose and transfer to each potential bidder (the “**Bidders**”) and to their advisors, if requested by such Bidders, personal information of identifiable individuals, including, without limitation, all human resources and payroll information in Dundee’s records pertaining to Dundee’s past and current employees, but only to the extent desirable or required to negotiate or attempt to complete a sale of the Property and/or the Business (as hereinafter defined) (“**Sale**”). Each Bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to Dundee, or in the alternative destroy all such information. The successful Bidder(s) shall maintain and protect the privacy of such information and, upon closing of the transaction contemplated in the successful Bid(s), shall be entitled to use the personal information provided to it that is related to the Property and/or Business acquired pursuant to the Sale in a manner which is in all material respects identical to the prior use of such information by Dundee, and

shall return all other personal information to Dundee, or ensure that all other personal information is destroyed.

## POSSESSION OF PROPERTY AND OPERATIONS

7. **THIS COURT ORDERS** that Dundee shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**") and shall continue to carry on business in a manner consistent with the preservation of its business (the "**Business**"), subject at all times to the terms of the Forbearance Agreement and the Cash-Flow Statements (each as defined below). The Proposal Trustee shall not, by fulfilling its obligations under this Order, be deemed to have taken or maintained possession or control of the Property or Business, or any part thereof.

8. **THIS COURT ORDERS** that nothing contained in this Order shall require the Proposal Trustee to occupy or take control, care, possession or management (separately and/or collectively, "**Possession**") of any of the Property or Business. The Proposal Trustee shall not be or be deemed to be in Possession of the Property or Business for any purpose whatsoever, including, without limitation, within the meaning of the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder, or any other similar legislation in any other applicable jurisdiction, unless it is actually in possession or control of the Property or Business.

## POWERS OF PROPOSAL TRUSTEE

9. **THIS COURT ORDERS** that, in addition to the powers afforded to the Proposal Trustee under the BIA, the Proposal Trustee be and is hereby authorized to take all steps required to implement the BIA SSP and carry out the terms of this Order, including, without limitation, to:

- (a) assist Dundee in its preparation of the cash-flow statements (the "**Cash-Flow Statements**") and reporting required by National Bank, which information shall be reviewed with the Proposal Trustee and delivered to National Bank and its

**D** counsel in accordance with the Forbearance Agreement or as otherwise agreed to by National Bank;

(b) report to National Bank on, without limitation, information related to the Business or Property and the carrying out of the BIA SSP;

(c) report to this Court at such times and intervals as the Proposal Trustee may deem appropriate with respect to matters relating to the Business or Property, and such other matters as may be relevant to the proceedings herein;

**R**  
(d) have full and complete access to the Business and Property, including the premises, books, records, data, including data in electronic form, and other financial documents of Dundee, to the extent that it is necessary or desirable to adequately assess and monitor Dundee's Business and financial affairs or to perform its duties arising under this Order;

**A**  
(e) to retain and employ such consultants, agents, experts, accountants, advisors, counsel and such other persons (collectively "Assistants") as it deems reasonably necessary or desirable to assist with the BIA SSP or for the carrying out of the terms of this Order, in each case with the consent of National Bank; and

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

**F**  
10. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal, shall be commenced or continued against the Proposal Trustee except with the written consent of the Proposal Trustee or with leave of the Court.

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

## ADMINISTRATION CHARGE

12. **THIS COURT ORDERS** that the Proposal Trustee, counsel to the Proposal Trustee and counsel to Dundee shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, whether incurred prior to or after the date of this Order, by Dundee as part of the costs of these proceedings, subject to the terms of the Forbearance Agreement and the Cash-Flow Statements and any assessment by the Court. Dundee is hereby authorized and directed to pay the accounts of the Proposal Trustee, counsel to the Proposal Trustee and counsel to Dundee (for work performed in connection with these BIA proceedings) on a weekly basis or on such other basis agreed by Dundee and the applicable payee (with the consent of National Bank), subject to the terms of the Forbearance Agreement and the Cash-Flow Statements.

13. **THIS COURT ORDERS** that the Proposal Trustee, counsel for the Proposal Trustee and counsel to Dundee shall be entitled to the benefit of and are hereby granted a charge (the "Administration Charge") on the Property, which Administration Charge shall not exceed an aggregate amount of \$250,000, as security for their professional fees and disbursements incurred at their standard rates and charges, both before and after making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 25 and 27 hereof.

## DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

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

15. **THIS COURT ORDERS** that the directors and officers of Dundee shall be entitled to the benefit of and are hereby granted a charge (the "Directors' Charge") on the Property, which charge shall not exceed an aggregate amount of \$50,000, as security for the indemnity provided in paragraph 14 of this Order. The Directors' Charge shall have the priority set out in paragraphs 25 and 27 herein.

16. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) Dundee's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 14 of this Order.

**FORBEARANCE AGREEMENT**

17. **THIS COURT ORDERS** that the execution, delivery and entry into by Dundee of the amended and restated forbearance agreement dated 14 August 2017 (the "**Forbearance Agreement**") made among DELP, DOGL, Dundee Energy Limited ("**DEL**") and National Bank, as lender and agent for the lenders (in such capacity, the "**Lender**") (as described in the Presot Affidavit) is hereby approved, and Dundee is hereby authorized and directed to comply with and perform its obligations under the Forbearance Agreement and the amended and restated credit agreement made among DELP, as borrower, DEL and DOGL, as guarantors, and the Lender, dated as of 31 July 2012, as amended (the "**Credit Agreement**").

18. **THIS COURT ORDERS** that Dundee shall be entitled, subject to the terms of the Credit Agreement and the Forbearance Agreement, to continue to obtain and borrow, repay and re-borrow additional monies under the credit facility granted under the Credit Agreement (the "**Credit Facility**") from the Lender pursuant to the Credit Agreement and the Forbearance Agreement, in order to finance Dundee's working capital requirements, provided that borrowings by Dundee under the Credit Facility shall not exceed the amounts contemplated in the Credit Agreement and the Forbearance Agreement. For greater certainty, the Lender shall be entitled to apply receipts and deposits made to Dundee's bank accounts against the indebtedness of Dundee to the Lender in accordance with the Credit Agreement and the Forbearance Agreement, whether such indebtedness arose before or after the date of this Order.

19. **THIS COURT ORDERS** that Dundee is hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees or other definitive documents (the "**Definitive Documents**"), as are contemplated by the Forbearance Agreement or as may be reasonably required by the Lender pursuant to the terms thereof, together with such modifications as may be agreed upon by Dundee and the



Lender and consented to by the Proposal Trustee, and Dundee be and is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the Lender under and pursuant to the Credit Agreement and the Forbearance Agreement as and when same become due and are to be performed, notwithstanding any other provision of this Order.

20. **THIS COURT ORDERS** that in addition to the existing liens, charges, mortgages and encumbrances in favour of the Lender, as security for all of the obligations of Dundee to the Lender relating to advances made to Dundee under the Credit Facility from and after the date of this Order, the Lender shall be entitled to the benefit of and is hereby granted a charge (the "DIP Charge") on the Property. The DIP Charge shall have the priority set out in paragraphs 25 and 27 hereof.

21. **THIS COURT ORDERS** that, upon the earlier of the occurrence of a Termination Event or the last day of the Forbearance Period (in each case as defined in the Forbearance Agreement), the Lender may,

- (a) immediately cease making advances to Dundee;
- (b) set off and/or consolidate any amounts owing by the Lender to Dundee against the obligations of Dundee to the Lender under the Credit Agreement, the Forbearance Agreement, any other Credit Documents (as defined in the Credit Agreement) or the Definitive Documents; and
- (c) exercise any and all of its rights and remedies against Dundee or the Property under or pursuant to the Credit Agreement, the Forbearance Agreement, the other Credit Documents, the Definitive Documents, the DIP Charge, or the *Personal Property Security Act* (Ontario) or similar legislation in any other applicable jurisdiction, including without limitation, to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver in respect of the Property, or for a bankruptcy order against Dundee and for the appointment of a trustee in bankruptcy of Dundee and the foregoing rights and remedies of the Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of Dundee or the Property.

22. **THIS COURT ORDERS AND DECLARES** that the Lender shall be unaffected by the stay of proceedings provided for in section 69 or 69.1 of the BIA, as applicable.

23. **THIS COURT ORDERS AND DECLARES** that the Lender shall be treated as unaffected in any proposal ("**Proposal**") filed by Dundee under the BIA, or any plan of arrangement or compromise ("**Plan**") filed by Dundee under the *Companies' Creditors Arrangement*, R.S.C. 1985, c. C-36, as amended, or in any other restructuring proceeding, or with respect to any obligations outstanding as of the date of this Order or arising hereafter under the Credit Agreement, the Forbearance Agreement, the other Credit Documents or any of the Definitive Documents.

24. **THIS COURT ORDERS AND DECLARES** that the payments made by Dundee pursuant to this Order, the Credit Agreement, the Forbearance Agreement, the other Credit Documents or any of the Definitive Documents, and the granting of the DIP Charge, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

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

25. **THIS COURT ORDERS** that the priorities of the Administration Charge, the Directors' Charge, the DIP Charge and the Security (as defined in the Credit Agreement) granted to the Lender over the Property, as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$250,000);

Second – DIP Charge;

Third – Security granted to the Lender under or pursuant to the Credit Agreement (and as described in the Forbearance Agreement); and

Fourth – Directors' Charge (to the maximum amount of \$50,000).

26. **THIS COURT ORDERS** that the filing, registration or perfection of the Administration Charge, the Directors' Charge or the DIP Charge (collectively, the "**Charges**") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the

Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

27. **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property so charged by them and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person, other than (subject to further Order of the Court) validly perfected and enforceable security interests, if any, in favour of Alex Williamson Motor Sales Limited, Jim Pattison Industries Ltd. or National Leasing Group Inc., in each case under the Personal Property Security Registry (Ontario), or in favour of Enerflex Ltd. under the Personal Property Security Registry (Alberta).

28. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, Dundee shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless Dundee also obtains the prior written consent of the Proposal Trustee, the Lender and the beneficiaries of the Administration Charge and the Directors' Charge, or further Order of this Court.

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

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Forbearance Agreement, the Credit Agreement,

**D** the other Credit Documents or the Definitive Documents shall create or be deemed to constitute a breach by Dundee or the Lender of any Agreement to which any one of them is a party;

(b) none of the Charges shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from Dundee entering into the Forbearance Agreement, the Credit Agreement, the other Credit Documents or the Definitive Documents or the creation of the Charges, or the execution, delivery or performance of any such documents; and

(c) the payments made by Dundee pursuant to this Order, the Forbearance Agreement, the Credit Agreement, the other Credit Documents or the Definitive Documents or the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

30. **THIS COURT ORDERS** that any of the Charges created by this Order over leases of real property in Canada shall only be a charge in Dundee's interest in such real property leases.

#### **EXTENSION OF TIME TO FILE PROPOSAL**

31. **THIS COURT ORDERS** that, subject to paragraph 22 of this Order, the time within which a Proposal must be filed with the Official Receiver under section 62(1) of the BIA, and the corresponding stay of proceedings provided for in section 69 of the BIA, be and are hereby extended in accordance with section 50.4(9) of the BIA to and including 30 October 2017.

#### **SERVICE AND NOTICE**

32. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "Protocol") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service

of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: <http://cfcanada.fticonsulting.com/Dundee>.

33. **THIS COURT ORDERS** that Dundee, the Proposal Trustee and their counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to Dundee's creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or judicial obligation, and notice requirements, within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

34. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, Dundee and the Proposal Trustee are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to Dundee's creditors or other interested parties at their respective addresses as last shown on the records of Dundee and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

#### GENERAL

35. **THIS COURT ORDERS** that Dundee or the Proposal Trustee may from time to time apply to this Court for advice and directions in the discharge of their powers and duties hereunder.

36. **THIS COURT ORDERS** that nothing in this Order shall prevent the Proposal Trustee from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of Dundee, the Business or the Property.

37. **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 Dundee, the Proposal Trustee 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 Dundee and to the Proposal Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Proposal Trustee in any foreign proceeding, or to assist Dundee and the Proposal Trustee and their respective agents in carrying out the terms of this Order.

38. **THIS COURT ORDERS** that each of Dundee, the Lender and the Proposal Trustee be at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Proposal Trustee is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

39. **THIS COURT ORDERS** that any interested party (including Dundee, the Lender and the Proposal Trustee) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order, provided, however, that the Lender shall be entitled to rely on this Order as issued for all advances made and payments received under the Credit Agreement or the Forbearance Agreement up to and including the date this Order may be varied or amended.

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

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**Schedule A**

**D**

**R**

**A**

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## Dundee Energy Sale Solicitation Process

1. On August 15, 2017, Dundee Energy Limited Partnership and its general partner, Dundee Oil and Gas Limited (together, the "**Debtors**") filed a Notice of Intention to Make a Proposal pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the "**NOI Proceedings**"). FTI Consulting Canada Inc. ("**FTI**") was appointed as the proposal trustee (the "**Proposal Trustee**") under the NOI Proceedings.
2. In connection with the NOI Proceedings, the Debtors intend to bring a motion before the Ontario Superior Court of Justice (Commercial List) (the "**Court**") for an order (the "**Sale Process Order**") approving, *inter alia*, a sale solicitation process (the "**BIA SSP**" or "**Sale Process**") as described in this document. The purpose of the Sale Process is to seek proposals to purchase some or all of the assets, undertakings and properties of the Debtors (collectively, the "**Property**") and to implement one or a combination of transactions to purchase some or all of the Property.
3. The BIA SSP describes the manner in which prospective bidders (a) may gain access to or continue to have access to due diligence materials concerning the Debtors, their business and operations (the "**Business**") and the Property; (b) the manner in which bidders and bids become Qualified Bidders and Qualified Bids (as defined below), respectively; (c) the process for the evaluation of bids received; (d) the process for the ultimate selection of a Successful Bidder (as defined below); and (e) the process for obtaining such approvals (including the approval of the Court) as may be necessary or appropriate in respect of a Successful Bid.

### Defined Terms

4. All capitalized terms used in the BIA SSP and not otherwise defined have the meanings given to them below:
  - "**Approval Motion**" as defined in paragraph 31;
  - "**Business**" means the business being carried on by the Debtors;
  - "**Business Day**" means a day, other than a Saturday or Sunday, on which banks are open for business in the City of Toronto;
  - "**Claims and Interests**" as defined in paragraph 40;
  - "**Confidential Information Memorandum**" as defined in paragraph 8(d);
  - "**Court**" as defined in paragraph 2;
  - "**Data Room**" as defined in paragraph 13;
  - "**Debtors**" as defined in paragraph 1;



**"Deposit"** as defined in paragraph 24(m);

**"Final Bid"** as defined in paragraph 23;

**"Form of Purchase Agreement"** means the form of purchase and sale agreement to be developed by the Proposal Trustee and provided to those Qualified Bidders that submit a Qualified LOI;

**"FTI"** as defined in paragraph 1;

**"Known Potential Bidders"** as defined in paragraph 8(b);

**"Lender"** means National Bank of Canada;

**"LOI"** as defined in paragraph 12;

**"NDA"** means a non-disclosure agreement in form and substance satisfactory to the Proposal Trustee, which will inure to the benefit of any purchaser of the Property;

**"NOI Proceedings"** as defined in paragraph 1;

**"Notice"** as defined in paragraph 8(a);

**"Phase 1"** as defined in paragraph 12;

**"Phase 1 Bid Deadline"** as defined in paragraph 14;

**"Phase 2"** as defined in paragraph 22;

**"Phase 2 Bid Deadline"** as defined in paragraph 23;

**"Potential Bidder"** as defined in paragraph 9;

**"Property"** means the assets, properties and undertakings of the Debtors or any portion thereof;

**"Proposal Trustee"** as defined in paragraph 1;

**"Qualified Advisors"** as defined in paragraph 22;

**"Qualified Bid"** means a third party offer to purchase some or all of the Property in the form specified by the BIA SSP;

**"Qualified Bidder"** as defined in paragraph 10;

**"Qualified LOI"** as defined in paragraph 15;

**"Sale Process Order"** as defined in paragraph 2;

“**Successful Bid**” as defined in paragraph 28; and

“**Teaser**” as defined in paragraph 8(c).

**Conduct of Sale Process and Timeline**

5. The Proposal Trustee shall implement the Sale Process. The Sale Process Order and the BIA SSP shall exclusively govern the process for soliciting and selecting Qualified Bids.
6. The Debtors are required to assist and support the efforts of the Proposal Trustee in undertaking the Sale Process. In the event that there is disagreement as to the interpretation or application of the BIA SSP or the responsibilities of the Proposal Trustee or the Debtors hereunder, the Court will have jurisdiction to hear such matter and provide advice and directions, upon application by the Proposal Trustee or the Debtors.
7. The following table sets out the key milestones under the BIA SSP, subject to extension by the Proposal Trustee pursuant to and in accordance with the BIA SSP:

Milestone	Deadline
Commencement Date	September 5, 2017
Phase 1 Bid Deadline	October 19, 2017
Phase 2 Bid Deadline	November 24, 2017
Settle and execute a binding asset purchase agreement with respect to the Successful Bid	December 4, 2017
Date by which Approval Motion is heard	December 8, 2017
Closing of the transaction with Successful Bidder	January 10, 2018

**Opportunity**

8. As soon as practicable following issuance of the Sale Process Order, the Proposal Trustee, shall:
  - (a) cause a notice of the Sale Process (and such other relevant information which the Proposal Trustee considers appropriate) to be published in the *Daily Oil Bulletin* and the national edition of *The Globe and Mail*. On the same date, the Debtors will issue a press release setting out relevant information from such notice with Canada Newswire designating dissemination in Canada and major financial centres in the United States (the “**Notice**”);

- (b) in consultation with the Debtors, the Lender and any other stakeholder as deemed appropriate by the Proposal Trustee, prepare a list of persons who may have an interest in submitting a bid for the Property (the "**Known Potential Bidders**");
- (c) prepare a non-confidential teaser letter (the "**Teaser**") describing the opportunity to acquire some, all or substantially all of the Property to be made available by the Proposal Trustee to Known Potential Bidders, along with a draft form of the NDA; and
- (d) prepare a confidential information memorandum (the "**Confidential Information Memorandum**") describing the opportunity to acquire all or a portion of the Property, which will be made available by the Proposal Trustee to Qualified Bidders who execute the NDA.

### Participation Requirements

9. In order to participate in the Sale Process, each person (a "**Potential Bidder**") must deliver to the Proposal Trustee at the address specified in Exhibit "A":
  - (a) a letter setting forth the identity of the Potential Bidder, the contact information for such Potential Bidder and full disclosure of the principals of the Potential Bidder; and
  - (b) an executed NDA, which, among other things, shall include provisions whereby the Potential Bidder agrees to accept and be bound by the BIA SSP.
10. A Potential Bidder that has executed an NDA, and has delivered the documents and information described above, and that the Proposal Trustee, in its reasonable business judgement, determines is likely, based on the availability of financing, experience and other considerations, to be able to consummate a transaction to acquire some or all of the Property (including any liabilities to be assumed) will be deemed a "**Qualified Bidder**", and be promptly notified of such determination by the Proposal Trustee. **In no event shall the Lender constitute a Qualified Bidder.**
11. At any time during Phase 1 or Phase 2, the Proposal Trustee may, in its reasonable business judgment and after consultation with the Lender, eliminate a Qualified Bidder from the Sale Process, whereupon such bidder will be eliminated from the Sale Process and will no longer be a Qualified Bidder.

### Phase 1

12. For a period of forty-five (45) days following the date upon which the Notice is first published, the Proposal Trustee (with the assistance of the Debtors and in accordance with the BIA SSP) will solicit a non-binding indication of interest in the form of a non-binding letter of intent ("**LOI**") from each Qualified Bidder who may be interested in acquiring all or a portion of the Property ("**Phase 1**").

13. The Proposal Trustee will provide each Qualified Bidder who has executed an NDA with a copy of the Confidential Information Memorandum and access to an electronic data room of due diligence information (the "Data Room"). The Proposal Trustee, the Debtors and the Lender make no representation or warranty as to the information (i) contained in the Confidential Information Memorandum or the Data Room, (ii) provided through the due diligence process in Phase 1 or Phase 2 or (iii) otherwise made available to a Qualified Bidder, except to the extent expressly contemplated in any definitive sale agreement with a Successful Bidder duly executed and delivered by the Debtors and approved by the Court.
14. A Qualified Bidder that wishes to have the opportunity to submit a Qualified Bid as part of Phase 2 must deliver an LOI to the Proposal Trustee at the address specified in Exhibit "A" by no later than 12:00 p.m. (Eastern Time) on October 19, 2017, or such other date or time as may be agreed by the Proposal Trustee (the "Phase 1 Bid Deadline"). The Proposal Trustee shall be entitled to provide copies of the LOIs received to the Debtors and the Lender.
15. An LOI will be considered a "Qualified LOI" only if it:
  - (a) is submitted by a Qualified Bidder and received by the Phase 1 Bid Deadline;
  - (b) sets out the purchase price range in Canadian dollars (and U.S. dollar equivalent), including details of any liabilities to be assumed by the Qualified Bidder, along with a description as to how the Qualified Bidder intends to value net working capital of the Business;
  - (c) sets out the Property that is expected to be subject to the transaction and any of the Property expected to be excluded;
  - (d) contains specific indication of the sources of capital for the Qualified Bidder and preliminary evidence of the availability of such capital, or such other form of financial disclosure and credit-quality support or enhancement that will allow the Proposal Trustee to make a reasonable business or professional judgment as to the Qualified Bidder's financial or other capabilities to consummate the transaction contemplated by its LOI;
  - (e) contains a description of the structure and financing of the transaction (including, but not limited to, the sources of financing of the purchase price, preliminary evidence of the availability of such financing, steps necessary and associated timing to obtain such financing and any related contingencies, as applicable);
  - (f) contains a description of the conditions and approvals required for a final and binding offer, including any anticipated corporate, security holder, internal or regulatory approvals required to close the transaction, an estimate of the anticipated time frame and any anticipated impediments for obtaining such approvals;

- (g) contains specific statements concerning the treatment of employees and plans for the ongoing involvement and roles of the Debtors' employees;
  - (h) contains an outline of any additional due diligence required to be conducted by the Qualified Bidder in order to submit a final and binding offer;
  - (i) fully discloses the identity of each person (including any person that controls such person) that will be directly or indirectly sponsoring or participating in the bid and the complete terms of any such participation;
  - (j) contains all conditions to closing that the Qualified Bidder may wish to impose; and
  - (k) contains such other information as may reasonably be requested by the Proposal Trustee.
16. The Proposal Trustee, in consultation with the Lender, may waive compliance with any one or more of the requirements specified above, and deem such non-compliant LOI to be a Qualified LOI, provided that doing so shall not constitute a waiver by the Proposal Trustee of the requirements of the foregoing paragraph or an obligation on the part of the Proposal Trustee to designate any other LOI as a Qualified LOI. The Proposal Trustee will be under no obligation to negotiate identical terms with, or extend identical terms to, each Qualified Bidder.

**Assessment of Qualified LOIs and Continuation or Termination of Sale Process**

17. Within three (3) days following the Phase 1 Bid Deadline, or such later date as may be determined by the Proposal Trustee, the Proposal Trustee will, in consultation with the Lender, assess the Qualified LOIs received during Phase 1, if any, and will determine whether there is a reasonable prospect of obtaining a Qualified Bid. The Proposal Trustee may request clarification from a Qualified Bidder of the terms of its Qualified LOI.
18. In assessing the Qualified LOIs, the Proposal Trustee, following consultation with the Lender, will consider, among other things, the following:
- (a) the form and amount of consideration being offered, including any purchase price adjustments and/or any non-cash consideration;
  - (b) the demonstrated financial capability of the Qualified Bidder to consummate the proposed transaction;
  - (c) the conditions to closing of the proposed transaction; and
  - (d) the estimated time required to complete the proposed transaction.
19. If one or more Qualified LOIs are received and the Proposal Trustee, exercising its reasonable business judgement and following consultation with the Lender, determines

that there is a reasonable prospect that a Qualified LOI may become a Qualified Bid, the Proposal Trustee will continue the Sale Process into Phase 2 in accordance with the BIA SSP.

20. If the Proposal Trustee determines that (a) no Qualified LOI has been received; or (b) there is no reasonable prospect of a Qualified LOI resulting in a Qualified Bid, the Proposal Trustee may, in its sole and absolute discretion, designate one or more LOIs as a Qualified LOI. If no Qualified LOI is received or designated by the Proposal Trustee, any of the Lender, the Proposal Trustee, or the Debtors may apply to the Court for further advice and directions including with respect to termination of the BIA SSP.
21. Following the Phase 1 Bid Deadline, the Proposal Trustee specifically reserves the right to negotiate with any Qualified Bidder with respect to any provision of its LOI or to request or agree to any changes in any such LOI. The Proposal Trustee may choose to take such steps with respect to one or more than one Qualified Bidder but the Proposal Trustee shall have no obligation to negotiate identical terms with, or extend identical terms to, each Qualified Bidder. The Proposal Trustee reserves the right to request some, but not all, Qualified Bidders to submit a revised LOI reflecting improved terms or other amendments requested by the Proposal Trustee. The Proposal Trustee will be under no obligation to provide each Qualified Bidder the opportunity to improve terms of any LOI submitted to the Proposal Trustee following the Phase 1 Bid Deadline.

## Phase 2

22. Each Qualified Bidder with a Qualified LOI who has been invited by the Proposal Trustee to participate in Phase 2 and at the request of such Qualified Bidder, its Qualified Advisors (as defined below), will be granted further access to such due diligence materials and information relating to the Property and the Business as the Proposal Trustee in its reasonable business judgement, determines appropriate, including information or materials reasonably requested by each Qualified Bidder, on-site presentations and tours of the Property, and access to further information in the Data Room ("Phase 2"). In addition, selected due diligence materials may be withheld from a Qualified Bidder under Phase 2 if the Proposal Trustee determines such information to represent proprietary or sensitive competitive information. "Qualified Advisors" means the legal and financial advisor(s) and/or lenders to a Qualified Bidder, provided that, in each case, such advisor or lender: (a) is reasonably acceptable to the Proposal Trustee; and (b) has executed or is bound by the NDA.
23. A Qualified Bidder that is not eliminated from the Sale Process and that wishes to proceed must deliver to the Proposal Trustee a final binding proposal to purchase some or all of the Property (a "Final Bid") including a duly authorized and executed purchase agreement based on the Form of Purchase Agreement and accompanied by a mark-up of the Form of Purchase Agreement showing amendments and modifications made thereto, together with all exhibits and schedules thereto, and such ancillary agreements as may be required by the Qualified Bidder, at the address specified in Exhibit "A" hereto (including by email or fax transmission) so as to be received by the Proposal Trustee by no later than 12:00 p.m. (Eastern Time) on November 24, 2017, or such other date or time as

may be determined by the Proposal Trustee in consultation with the Lender (the "**Phase 2 Bid Deadline**").

24. A Final Bid will be considered a Qualified Bid only if (a) it is submitted by a Qualified Bidder who submitted a Qualified LOI on or before the Phase 1 Bid Deadline or whose LOI was designated as a Qualified LOI by the Proposal Trustee; and (b) the Final Bid complies with, among other things, the following requirements:
- (a) it includes a letter stating that the Qualified Bidder's offer is irrevocable until the earlier of: (i) the approval by the Court of a Successful Bid; and (ii) thirty (30) days following the Phase 2 Bid Deadline, provided that if such Qualified Bidder is selected as the Successful Bidder, its offer will remain irrevocable until the closing of the transaction with the Successful Bidder;
  - (b) it includes written evidence of a firm irrevocable commitment for all required financing, or other evidence of the financial ability of such Qualified Bidder to consummate the proposed transaction, that will allow the Proposal Trustee, to make a reasonable determination as to the Qualified Bidder's financial and other capabilities to consummate the transaction contemplated by its Final Bid;
  - (c) sets out the purchase price range in Canadian dollars (and U.S. dollar equivalent), including details of any liabilities to be assumed by the Qualified Bidder, along with a description as to how the Qualified Bidder intends to value net working capital of the Business;
  - (d) it describes the Property to be included as well as the Property to be excluded, divested or disclaimed prior to closing, if any;
  - (e) it includes full details of the proposed number of employees who will become employees of the Qualified Bidder and provisions setting out the terms and conditions of employment for continuing employees;
  - (f) it includes details of any liabilities to be assumed by the Qualified Bidder;
  - (g) it is not conditional upon, among other things:
    - (i) the outcome of unperformed due diligence by the Qualified Bidder; or
    - (ii) obtaining financing;
  - (h) it fully discloses the identity of each entity that will be sponsoring or participating in the Final Bid, and the complete terms of such participation;
  - (i) it outlines any anticipated regulatory and other approvals required to close the transaction and the anticipated time frame and any anticipated impediments for obtaining such approvals;

- (j) it identifies with particularity the contracts and leases the Qualified Bidder wishes to assume and reject, contains full details of the Qualified Bidder's proposal for the treatment of related cure costs (and provides adequate assurance of future performance thereunder); and it identifies with particularity any executory contract or unexpired lease the assumption and assignment of which is a condition to closing;
- (k) it provides a timeline to closing with critical milestones;
- (l) it includes evidence, in form and substance reasonably satisfactory to the Proposal Trustee, of authorization and approval from the Qualified Bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the transaction contemplated by the Final Bid;
- (m) it is accompanied by a refundable deposit (the "Deposit") in the form of a wire transfer (to a bank account specified by the Proposal Trustee), or such other form acceptable to the Proposal Trustee, payable to the order of the Proposal Trustee, in trust, in an amount equal to not less than 10% of the purchase price, to be held and dealt with in accordance with the terms of the BIA SSP;
- (n) it contains other information reasonably requested by the Proposal Trustee;
- (o) it is received by the Phase 2 Bid Deadline; and
- (p) it includes an acknowledgement and representation that the Qualified Bidder: (a) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the assets to be acquired and liabilities to be assumed in making its Final Bid; and (b) did not rely upon any written or oral statements, representations, promises, warranties or guarantees whatsoever, whether express or implied (by operation of law or otherwise) made by the Proposal Trustee, the Debtors or the Lender, regarding any matter or thing, including, without limitation, the Debtors, the Property, the Business the assets to be acquired or liabilities to be assumed or the completeness of any information provided in connection therewith, except as expressly stated in the purchase and sale agreement.

25. The Proposal Trustee may waive compliance with any one or more of the requirements specified above and deem such Final Bid to be a Qualified Bid, provided that doing so shall not constitute a waiver by the Proposal Trustee of the requirements of the foregoing paragraph or an obligation on the part of the Proposal Trustee to designate any other Final Bid as a Qualified Bid. The Proposal Trustee will be under no obligation to negotiate identical terms with, or extend identical terms to, each Qualified Bidder.

#### **Evaluation of Qualified Bids**

26. The Proposal Trustee, in consultation with the Lender, will review each Final Bid received. For the purpose of such consultation and evaluations, the Proposal Trustee may request clarification of the terms of any Final Bid.



27. Evaluation criteria may include, but are not limited to items such as: (a) the purchase price and net value (including assumed liabilities and other obligations to be performed by the Qualified Bidder); (b) the firm, irrevocable commitment for financing the transaction; (c) the claims likely to be created by such Final Bid in relation to other Final Bids; (d) the counterparties to the transaction; (e) the terms of the proposed transaction documents; (f) other factors affecting the speed, certainty and value of the transaction (including any regulatory approvals required to close the transaction; (g) planned treatment of stakeholders; (h) the assets included or excluded from the Final Bid; (i) proposed treatment of the employees; (j) any transition services required from the Debtors post-closing and any related restructuring costs; and (k) the likelihood and timing of consummating the transaction.
28. If one or more Qualified Bids is received or so designated by the Proposal Trustee, the Proposal Trustee, exercising its reasonable business judgment and following consultation with the Lender, may select the most favourable Qualified Bid(s) (each, a "Successful Bid"), whereupon the Debtors shall proceed to negotiate and settle the terms of a definitive agreement with the applicable Qualified Bidder. The terms of any such definitive agreement must be acceptable to the Proposal Trustee and the Lender, each in its discretion.
29. Following the Phase 2 Bid Deadline, the Proposal Trustee specifically reserves its right to negotiate with any Qualified Bidder with respect to any provision of its Final Bid or to request or agree to any changes in any such Final Bid. The Proposal Trustee may choose to take such steps with respect to one of more Qualified Bidder but the Proposal Trustee shall have no obligation to negotiate identical terms with, or extend identical terms to, each Qualified Bidder. The Proposal Trustee reserves its right to request some, but not all, Qualified Bidders submit a revised Final Bid reflecting improved terms or other amendments requested by the Proposal Trustee. The Proposal Trustee will be under no obligation to provide to each Qualified Bidder the opportunity to improve the terms of any Final Bid submitted to the Proposal Trustee following the Phase 2 Deadline.

### **Phase 2 Guidelines**

30. If the Proposal Trustee determines that no Qualified Bid has been received at the end of Phase 2, the Proposal Trustee may, in its sole and absolute discretion, designate one or more Final Bids as a Qualified Bid. If no Qualified Bid is received or designated by the Proposal Trustee, any of the Lender, the Proposal Trustee or the Debtors may apply to the Court for further advice and directions, including with respect to the termination of the Sale Process.

### **Approval Motion for Successful Bid**

31. The Debtors will bring a motion before the Court (the "Approval Motion") for an order approving the Successful Bid(s) and authorizing the Debtors to enter into any and all necessary agreements with respect to the Successful Bid(s) and to undertake such other actions as may be necessary or appropriate to give effect to the Successful Bid(s).

32. The Approval Motion will be held on a date to be scheduled by the Court upon motion by the Debtors. The Approval Motion may be adjourned or rescheduled by the Debtors or the Proposal Trustee, on notice to the Lender, by an announcement of the adjourned date at the Approval Motion and without the need for any further notice thereof, provided that in no circumstance shall the Approval Motion be adjourned or rescheduled beyond December 8, 2017.
33. All Qualified Bids (other than the Successful Bid) will be deemed rejected on the date of approval of the Successful Bid(s) by the Court.

#### **Deposits**

34. All Deposits will be retained by the Proposal Trustee and invested in an interest bearing trust account. If there is a Successful Bid, the Deposit (plus accrued interest) paid by the Successful Bidder whose bid is approved at the Approval Motion will be applied to the purchase price to be paid by the Successful Bidder upon closing of the approved transaction and will be non-refundable. The Deposits (plus applicable interest) of Qualified Bidders not selected as the Successful Bidder(s) will be returned to such bidders within 5 Business Days of the date upon which the Successful Bid is approved by the Court. If there is no Successful Bid, then, subject to the following paragraph, all Deposits (plus applicable interest) will be returned to the bidders within 5 Business Days of the date upon which the Sale Process is terminated in accordance with the BIA SSP.
35. If a Successful Bidder breaches its obligations under the terms of the Sale Process, its Deposit plus interest shall be forfeited as liquidated damages and not as a penalty.

#### **Approvals**

36. For the avoidance of doubt, the approvals required pursuant to the terms hereof are in addition to, and not in substitution for, any other approvals required pursuant to the NOI Proceedings or any statute or as otherwise required at law in order to implement a Successful Bid.

#### **Amendment**

37. The Proposal Trustee may vary or amend the BIA SSP (including, without limitation, extending the Phase 1 Bid Deadline or the Phase 2 Bid Deadline) with the consent of the Lender or the approval of the Court.
38. The Sale Process does not, and will not be interpreted to, create any contractual or other legal relationship between the Proposal Trustee or the Debtors and any Qualified Bidder or any other person, other than as specifically set forth in a definitive agreement that may be signed with the Debtors. At any time during the Sale Process, the Proposal Trustee may apply to the Court for advice and directions with respect to the discharge of its power and duties hereunder.

#### **"As Is, Where Is"**

39. Any sale of the Property by the Debtors will be on an "as is, where is" basis as at the time of closing and without surviving representations or warranties of any kind, nature, or description by the Debtors, the Proposal Trustee, the Lender or any of their respective affiliates, advisors, agents or representatives, except to the extent otherwise provided under a definitive agreement with a Successful Bidder executed and delivered by the Debtors. Neither the Proposal Trustee, the Debtors, the Lender nor any of their respective affiliates, advisors, agents or representatives makes any representation or warranty as to title, description, fitness for purpose, merchantability, quantity, conditions or quality of any of the Property or the accuracy or completeness of the information contained in any of the Teaser, Confidential Information Memorandum or in the Data Room, except to the extent otherwise provided by the Debtors under a definitive agreement with a Successful Bidder executed and delivered by the Debtors. The Debtors are not required to inspect or count, or provide any inspection or counting, of the Property or any part thereof and each Qualified Bidder shall be deemed, at its own expense, to have relied entirely on its own inspection and investigation with respect to the Property. It shall be the Successful Bidder's sole responsibility to obtain, at its own expense, any consents to such transfer and any further documents or assurances which are necessary or desirable in the circumstances. Without limiting the generality of the foregoing, any and all conditions, warranties and representations expressed or implied pursuant to the *Sale of Goods Act* (Ontario) do not apply to the sale of the Property and shall be waived by the Successful Bidder.

#### **Free Of Any And All Claims and Interests**

40. As part of the Approval Motion, the Debtors will seek an order vesting in the Successful Bidder all of the right, title and interest of the Debtors to that part of the Property subject to the Successful Bid free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options and interests on or against the Property (collectively, the "Claims and Interests"). Such Claims and Interests will attach only to the net proceeds of the sale of such Property (without prejudice to any claims or causes of action regarding the priority, validity or enforceability thereof), except to the extent otherwise set forth in a definitive agreement with a Successful Bidder.

#### **No Obligation to Conclude a Transaction**

41. The highest or any Final Bid received pursuant to the BIA SSP will not necessarily be accepted. In addition, at any time during the Sale Process, the Proposal Trustee may terminate the BIA SSP, and shall provide notice of such a decision to all Qualified Bidders.

#### **Further Orders**

42. At any time during the Sale Process, the Proposal Trustee may apply to the Court for advice and directions with respect to the discharge of its powers and duties hereunder.

**Exhibit "A"****Address**

FTI Consulting Inc.  
TD South Tower  
79 Wellington Street West  
Suite 2010, PO Box 104  
Toronto ON M5K 1G8

Attention: Messrs. Dean Mullett and Adam Zalev

Estate Number/Court File No:

**AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF DUNDEE ENERGY LIMITED PARTNERSHIP OF THE CITY OF TORONTO IN THE PROVINCE OF ONTARIO**

AND

Estate Number/Court File No:

**AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF DUNDEE OIL AND GAS LIMITED OF THE CITY OF TORONTO IN THE PROVINCE OF ONTARIO**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(IN BANKRUPTCY AND INSOLVENCY)  
COMMERCIAL LIST**

**(PROCEEDING COMMENCED AT TORONTO)**

**ORDER**

**GOWLING WLG (CANADA) LLP**  
Barristers and Solicitors  
1 First Canadian Place  
100 King Street West, Suite 1600  
Toronto, Ontario M5X 1G5

**E. Patrick Shea (LSUC No. 39655K)**  
Telephone: (416) 369-7399  
Facsimile: (416) 862-7661

**SOLICITORS FOR DELP AND DOGL**

Estate Number: 31-  
Court File Number: 31-

**AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF DUNDEE ENERGY LIMITED PARTNERSHIP**

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(IN BANKRUPTCY AND INSOLVENCY)**  
Commercial List

(PROCEEDING COMMENCED AT TORONTO)

**NOTICE OF MOTION**

**GOWLING WLG (CANADA) LLP**  
Barristers & Solicitors  
1 First Canadian Place, Suite 1600  
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**E. PATRICK SHEA (LSUC. No. 39655K)**  
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Solicitors for DELP and DOGL

# TAB 2

Estate Number: 31-  
Court File Number: 31-

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(IN BANKRUPTCY AND INSOLVENCY)**  
**COMMERCIAL LIST**

**AND IN THE MATTER OF THE NOTICE OF INTENTION TO  
MAKE A PROPOSAL OF DUNDEE ENERGY LIMITED PARTNERSHIP OF THE  
CITY OF TORONTO IN THE PROVINCE OF ONTARIO**

- and -

Estate Number: 31-  
Court File Number: 31-

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(IN BANKRUPTCY AND INSOLVENCY)**  
**COMMERCIAL LIST**

**AND IN THE MATTER OF THE NOTICE OF INTENTION TO  
MAKE A PROPOSAL OF DUNDEE OIL AND GAS LIMITED OF THE CITY OF  
TORONTO IN THE PROVINCE OF ONTARIO**

**AFFIDAVIT OF LUCIE PRESOT**  
**(SWORN 14 AUGUST 2017)**

**I, LUCIE PRESOT, of the City of Toronto, in the Province of Ontario, MAKE  
OATH AND SAY:**

1. I am an officer and director of Dundee Oil and Gas Limited (“**DOGL**”) and have knowledge of the matters hereinafter set out. Where my information is based upon information received from other parties or from documentation, I identify the source of that information and believe such information to be true.
2. Produced and shown to me is a volume of documents entitled “Brief of Exhibits—Presot 14 Aug 17 Affidavit” (the “**14 Aug 17 Brief**”). Throughout this Affidavit I will refer to



documents in the 14 Aug 17 Brief and will identify those document by the tab of the 14 Aug 17 Brief at which they can be located.

**I. Introduction**

3. Dundee Energy Limited Partnership (“DELP”) is a limited partnership created pursuant to the Limited Partnership Act (Ontario). DOGL is a company incorporated pursuant to the *Business Corporation Act* (Ontario). It is the General Partner of the DELP. DOGL’s only asset is its interest in DELP.
4. As described further below, DELP’s primary lender and secured creditor is National Bank of Canada (the “Bank”), DELP has defaulted on its obligations owing to the Bank and the Bank has made formal demand on, *inter alia*, DELP and DOGL including issuing Notice of Intention to Enforce Security pursuant to s. 244 of the *Bankruptcy and Insolvency Act* (the “BIA”).
5. It is expected that by the end of the day on 14 August 2017, each of DOGL and DELP will initiate proceedings under Part III of the BIA (the “Proposal Proceedings”) by filing a Notice of Intention to Make a Proposal pursuant to s. 50.4(1) of the BIA naming FTI Consulting Canada Inc. (“FTI”) as trustee under each of their respective proposals. The Bank will be unaffected by the Proposal Proceedings and, subject to certain terms and conditions, has agreed to continue to provide funding to DELP.
6. I am swearing this Affidavit in connection with Motions (the “First Day Motions”) by DOGL and DELP seeking an Order (the “First Day Order”), *inter alia*:
  - (a) administratively consolidating the Proposal Proceedings;
  - (b) approving a sales and marketing process to be conducted by FTI;
  - (c) granting charges in favour of the Bank, FTI and its counsel, counsel to DOGL and DELP, and the directors of DOGL;
  - (d) ratifying and approving a forbearance agreement entered into with the Bank;

- (e) confirming that the Bank will be unaffected by any reorganization proceedings in respect of DELP and DOGL, including the Proposal Proceedings; and
  - (f) extending the stays of proceedings arising in respect of DOGL and DELP to 30 October 2017.
7. The Bank consents to the relief being sought by DELP and DOGL on the First Day Motions.

## **II. DELP and DOGL**

8. As noted above, DELP is a limited partnership and the General Partner of DELP is DOGL. DOGL is the general partner of DELP. Dundee Energy Limited (“DEL”) is the limited partner in DELP and holds a 99.99% interest therein.
9. A chart showing the corporate structure and ownership of DOGL and DELP is at **Tab 1** of the 14 Aug 17 Brief.
10. DOGL’s only asset is its interest in DELP.
11. DELP holds on-and off-shore oil and natural gas producing assets consisting of:
- (a) wells located on freehold real property in Southwestern Ontario;
  - (b) wells located on offshore leasehold real property (Crown leases) in Lake Erie; and
  - (c) wells located on onshore leasehold real property in Southwestern Ontario.
12. In addition to these oil and natural gas assets, DELP owns:
- (a) a fleet of drill and service barges and supply boats to service the offshore wells and pipeline infrastructure; and
  - (b) an onshore rotary drilling rig.
13. DELP employs a number of people on a full-time basis. It also employs people on a contract basis as may be required.

14. Ontario PPSA search results for each of DELP and DOGL are at **Tab 2** of the 14 Aug 17 Brief.
15. DELP's primary secured creditor is the Bank. As at 11 August 2017, DELP owed the Bank over \$57 million. As described further below, the Bank has a security interest in all of DELP's assets, property and undertaking as security.
16. There are a number of equipment leases registered against DELP.
17. DELP's unsecured creditors consist of trade creditors and suppliers. As at 14 August 2017, DELP owed trade creditors approximately \$3.4 million. With one exception, DELP has paid its trade creditors in the ordinary course of business and the amounts owing reflect obligations that are not yet due under the applicable trade terms. A large portion of \$3.4 million, \$2 million of which relates to real property and pipeline taxes that are in dispute.
18. Aside from whatever "stump" amount may be owing from the date of the last payroll until 15 August 2017, DELP has paid all wages owing to its employees. Employees are required to take their vacations days.
19. DELP is current in respect of the remittance of employee source deductions and HST. As of 15 August 2017 all HST will have been remitted by DELP.
20. DELP has a group RESP matching program for its employees. All remittances by DELP under that program have been made by DELP.
21. In order to continue to carry on business in the ordinary course, DELP is dependent on financing from the Bank. As set forth further below, DELP is in default under its obligations to the Bank and the Bank advised DELP that it intended to take steps to enforce its security against all of DELP's property. As set forth further below, DELP has negotiated a forbearance agreement with the Bank that will permit DELP to commence reorganization proceedings and continue to carry on business in the ordinary course while efforts are made by FTI to locate a purchaser for DELP's assets and business. The Bank has agreed to fund DELP's cash flow and to permit DELP to operate in the ordinary

course while FTI attempts to locate a purchaser. The essential purpose of the First Day Motion is to implement the terms of forbearance with the Bank.

### III. Reasons for Financial Difficulty

22. The reasons for DELP's current financial situation is the low price for oil and natural gas. The low market prices for oil and gas over the last few years has impacted DELP's revenues such that, at the end of December 2016, DELP found itself unable to effect a required reduction in the Bank's credit facility. In addition, the low commodity prices have had a negative impact on the value of DELP's oil and natural gas assets reducing the borrowing availability under its operating facility with the Bank.

### IV. The Bank's Credit Facility and Security Package

23. Pursuant to an amended and restated credit agreement made among DELP, as borrower, Dundee Energy Limited ("**DEL**") and DOGL, as guarantors (DELP, DEL and DOGL are collectively referred to as the "**Credit Parties**"), and the Bank, as lender and agent for the lenders, dated as of 31 July 2012 (the "**Credit Agreement**") the Bank granted certain credit facilities to DELP (the "**Credit Facilities**"). A copy of the Credit Agreement is at **Tab 3** of the 14 Aug 17 Brief.
24. The primary Credit Facility granted under the Credit Agreement is an operating facility (the "**Operating Facility**") originally in the amount of \$70 million. The Operating Facility is a "demand facility" and had an original maturity date of 31 May 2013.
25. By amending agreement made as of 18 February 2016 (the "**February Amending Agreement**"), the Credit Agreement was amended, *inter alia*, as follows:
- (a) the maturity date was extended to 31 May 2017;
  - (b) the limit on the Operating Facility was lowered; and
  - (c) there was a requirement for a mandatory reduction of the Operating Facility to \$55 million on 31 December 2016.
26. A copy of the February Amending Agreement is at **Tab 4** of the 14 Aug 17 Brief.

27. DELP was unable to reduce the Operating Facility to \$55 million on 31 December 2016 as required by the February Amending Agreement. The parties entered into a further amending agreement made as of 3 January 2017 whereby, *inter alia*, the date for the reduction of the Operating Facility was extended to 13 January 2017. By further amending agreement made as of 12 January 2017 (the "**January 12 Amending Agreement**") the parties agreed, *inter alia*, to further extend the required pay-down date to 31 January 31, 2017. The parties also entered into a forbearance agreement made as of 31 January 31, 2017, which forbearance agreement is discussed later in this Affidavit.
28. DELP granted an extensive security package to the Bank in order to secure DELP's obligations to the Bank. The security package includes a fixed and floating charge demand debenture dated as of 29 June 2010 made by DELP, by its general partner, DOGL (the "**Demand Debenture**") for the benefit of the Bank. The Demand Debenture grants security to the Bank over all of the assets and undertakings of DELP to secure all amounts and other obligations owed to the Bank. A copy of the Demand Debenture is at **Tab 5** of the 14 Aug 17 Brief.
29. DOGL and DEL provided limited guarantees of DELP's obligations to the Bank and granted the Bank security in the shares of DOGL as well as DEL's and DOGL's interest in DELP.
30. In addition to the Demand Debenture, DELP and its guarantors granted further security to the Bank. This security is listed at **Tab 6** of the 14 Aug 17 Brief.
31. Pursuant to an engagement letter dated 3 October 2016, FTI was retained to provide certain financial advisory and consulting services to the Bank's counsel in connection with DELP.
32. On 9 January 2017, the Bank met with DELP and its financial advisors. At this meeting DELP advised that it intended to undertake a sale or investment solicitation process ("**SISP**") in order to explore financial alternatives. It was anticipated that the process would take place over a period of approximately 12 weeks commencing in the second week of January of 2017. The Bank supported the SISP process and the parties entered

into the January 12 Amending Agreement to extend the date for the reduction of the Operating Facility in order to allow the parties time to negotiate and enter into a forbearance agreement reflecting the SISP process. Ultimately, DELP, DEL, DOGL and the Bank entered into a forbearance agreement made as of 31 January 2017 (the “**January 2017 Forbearance**”) to permit the SISP Process to be implemented.

33. The January 2017 Forbearance originally required that bids be submitted under the SISP by no later than 24 February 2017. DELP and its financial advisor requested an extension of that date to 10 March 2017. The Bank agreed and the parties entered into an amending agreement made as of 23 February 2017 reflecting, *inter alia*, an amendment to the SISP timeline.
34. On 14 March 2017, the Bank met with DELP and its financial advisors in order to discuss the bids that had been received pursuant to the SISP process. On 5 April 2017, the Bank met, once again, with DELP and its financial advisors. The bids, as they stood at that time, were again reviewed. None of the bids were satisfactory to the Bank.
35. On 7 April 2017, the Bank sent an email to DELP advising that the Bank was not prepared to extend the 7 April 2017 date for the receipt of a binding sale or investment agreement as required by the January 2017 Forbearance.
36. In the months of April and May of 2017, there was ongoing dialogue between DELP and the Bank.
37. On 30 May 2017, the Bank met, once again, with DELP and representatives of Dundee Corporation. DELP and Dundee Corporation put forward a proposal to the Bank with respect to a restructuring. That proposal was not acceptable to the Bank.
38. On 23 June 2017, the Bank demanded immediate payment of all amounts due to it and delivered notices of intent to enforce security pursuant to s. 244 of the BIA.
39. DELP requested three additional business days within which to put forward a final, definitive proposal to address the amount owing to the Bank. The Bank acceded to that

request and “withdrew” its demands for payment. The Bank agreed not to reissue demands for payment or notices of intent to enforce security before 29 June 2017.

40. On 29 June 2017, the Bank was presented with a proposed transaction whereby the assets of DELP would be acquired by a third party and a payment would be made to the Bank in full and final settlement of amounts owing to the Bank. The Bank advised that it would review the proposal and agreed that it would not reissue demands for payment or notices of intent to enforce security without giving the Credit Parties 24 hours written notice thereof.
41. On 4 July 2017 the Bank provided certain comments with respect to the business terms of the proposed transaction. On 11 July 2017, in response to the Bank’s comments, a revised proposal was submitted to the Bank. On 19 July 2017, the Bank advised DELP that the revised proposal was not acceptable to the Bank and gave 24 hours’ notice of its intention to reissue demands for payment and notices of intent to enforce security as required by the BIA.

**V. 21 July 2017 Demand**

42. By letters dated 21 July 2017, the Bank demanded payment and delivered notices of intent to enforce security pursuant to s. 244 of the BIA. Copies of the letters and notices from 21 July 2017 (the “**July Enforcement Documents**”) are at **Tab 7** of the 14 Aug 17 Brief.

**VI. August 2017 Forbearance Agreement**

43. Subsequent to the July Enforcement Documents, an amended and restated forbearance agreement made as of 14 August 2017 (the “**August 2017 Forbearance Agreement**”) was negotiated to permit DOGL and DELP to commence the Proposal Proceedings with the Bank’s support. A copy of the August 2017 Forbearance Agreement is at **Tab 8** of the 14 Aug 17 Brief.
44. The August 2017 Forbearance Agreement provides for FTI to conduct a process to locate a purchaser or purchasers for DELP’s assets, property and undertaking (the “**BIA SSP**”).

45. The August 2017 Forbearance Agreement contemplates the commencement of the Proposal proceedings and the key terms of the August 2017 Forbearance Agreement provide:
- (a) the Operating Facility will be fixed at \$57,900,000 and there will be an additional \$100,000 in availability under a credit card;
  - (b) all motions, orders, and other pleadings and related documents filed or submitted to the Court in the Proposal Proceedings must be consistent with the terms of the August 2017 Forbearance Agreement;
  - (c) orders sought in the Proposal Proceedings will be consistent with the August 2017 Forbearance Agreement and will not have an adverse impact on the rights, remedies or interests of the Bank;
  - (d) the cash flow statements prepared by DELP and DOGL in the Proposal Proceedings (the "Cash Flow Statements") will be approved by the Bank, and DELP and DOGL will not make any payments except in accordance with the Cash Flow Statements;
  - (e) DELP will not disclaim any contract in the Proposal Proceedings that is material to its business except as otherwise approved by the FTI on prior notice to the Bank;
  - (f) DELP will not amend or renew, extend the term, disclaim or accept the surrender of any real property lease except as otherwise approved by FTI and on prior notice to the Bank;
  - (g) Certain required financial reporting documentation and drafts of all materials prepared in furtherance of the Proposal Proceedings will be provided to the Bank;
  - (h) DELP and DOGL will seek and obtain the First Day Order in form and substance satisfactory to the Bank;



- (i) DELP and DOGL will comply with the BIA SSP and cooperate with the FTI in connection with all aspects of the BIA SSP;
  - (j) any and all advances made by the Bank to DELP will be used only for: (a) funding in the ordinary course of DELP's operations and restructuring during the Proposal Proceedings; (b) DELP's out-of-pocket costs incurred in connection with the Proposal Proceedings (including all reasonable fees and expenses of its counsel, FTI and FTI's counsel); and (c) such other purposes as may be agreed to by the Bank in writing, all in accordance with the Cash-Flow Statements; and
  - (k) DELP, DOGL and DEL release any possible claims against the Bank<sup>1</sup>.
46. In the event of the default under the August 2017 Forbearance Agreement, the Bank will have the immediate right to appoint FTI as receiver over the assets and property subject to its security—all of the assets, property and undertaking of DELP as well as the shares of DOGL and the interest of DOGL and DEL in DELP. Defaults under the August 2017 Forbearance Agreement include:
- (a) failure to keep or perform any of the covenants, terms or conditions contained in the August 2017 Forbearance Agreement;
  - (b) the challenge by DELP, DOGL or DEL of the validity of, *inter alia*, the Credit Agreement or the August 2017 Forbearance Agreement;
  - (c) the termination of the Proposal Proceedings or the bankruptcy of DELP or DOGL;
  - (d) the happening of a material adverse change;
  - (e) failure on the part of DELP to pay any of its post-filing obligations in respect of governmental obligations that would rank in priority to the Bank; or
  - (f) the termination or lifting of the stay of proceedings in respect of DELP or DOGL.

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<sup>1</sup> I am not aware of any possible claims against the Bank.

47. There are certain conditions precedent to the August 2017 Forbearance all of which have not been satisfied as at the swearing of this Affidavit.

**VII. First Day Motions**

48. As noted above, it is expected that the Proposal Proceedings will be commenced on 15 August 2017.

49. It is a condition of the August 2017 Forbearance Agreement that DELP and DOGL bring the First Day Motions seeking the First Day Order, *inter alia*:

- (a) administratively consolidating the Proposal Proceeding;
- (b) approving the BIA SSP and authorizing FTI to conduct the BIA SSP;
- (c) approving the August 2017 Forbearance Agreement;
- (d) providing for the Bank to be an unaffected creditor under any reorganization proceeding that may be commenced by DELP or DOGL;
- (e) granting certain charges over DELP's and DOGL's assets, property and undertaking; and
- (f) granting an extension of the time within which DELP and DOGL must file proposals.

50. It is an event of default under the Forbearance Agreement if the First Day Order is not granted.

**A. Administrative Consolidation**

51. DOGL and DELP are requesting that the Proposal Proceedings be administratively consolidated to reduce costs and to ensure that the Proposal Proceedings are conducted in as efficient a manner as possible. As noted above, DOGL is the General Partner of DELP and its only assets are its interest in DELP.

**B. BIA SSP**

52. DOGL and DELP are requesting that FTI be authorized and directed, in addition to its duties and obligations as Proposal Trustee, to implement a process to market DELP's property and business for sale (the "BIA SSP"). The essential purpose of the BIA SSP is to locate a purchaser for DELP's assets, property and undertaking in order to satisfy the obligations owing to the Bank.
53. The BIA SSP will be conducted by FTI and under the terms of the 15 August Forbearance Agreement DELP and DOGL are, *inter alia*, required to co-operate with and assist FTI in connection with the BIA SSP. It is a default under the Forbearance if the BIA SSP is not approved or, once approved, is not conducted in accordance with the schedule set forth in the BIA SSP.

**C. Approval of August 2017 Forbearance Agreement**

54. DELP and DOGL are seeking approval for the August 2017 Forbearance Agreement. The approval being sought includes approval for DELP to obtain and borrow, repay and re-borrow additional funds from the Bank under the existing credit facilities. As noted above, the Bank has issued the required notices under s. 244 of the BIA and more than 10 days have expired from the delivery of those notices.

**D. Bank as Unaffected Creditor**

55. DELP and DOGL are seeking an Order declaring that the Bank is unaffected by the Proposal Proceedings and ordering that the Bank not be affected by any proceedings that DELP and DOGL might commence under the *Companies' Creditors Arrangement Act*. As noted above, the Bank has issued the required notices under s. 244 of the BIA and more than 10 days have expired from the delivery of those notices.

**E. Directors' Charge**

56. DELP and DOGL are requesting a charge in favour of DOGL's directors in the amount of \$50,000 (the "Directors' Charge"). The \$50,000 represents approximately one month of employee and HST remittances.

57. The Directors' Charge, if granted, would attach to all of DELP's assets, property and undertaking and would rank subordinate to the other charges being requested as well as to the Bank's existing security, but would have priority over all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise in favour of any person, other than validly perfected and enforceable security interests, if any, in favour of Alex Williamson Motor Sales Limited, Jim Pattison Industries Ltd., National Leasing Group Inc. and Enerflex Ltd. (the "**Leasing Creditors**").
58. DELP is, as noted above, current in respect of all employee and HST remittances. The cash flow projection prepared by DELP and approved by the Bank provides for the payment of all employee and HST remittances. The Directors' Charge is intended to provide security for any outstanding remittances in the event that something unforeseen takes place that results in the sudden termination of the Proposal Proceedings and the bankruptcy of DELP and DOGL leaving employee or HST remittances unpaid. In such circumstances the Directors' Charge will provide some measure of protection for DOGL's directors.

**F. Administrative Charge**

59. DELP and DOGL are requesting a charge in favour of FTI and Gowling in the amount of \$250,000 (the "**Administrative Charge**"). The Administrative Charge will, if granted, attach to all of DELP's assets, property and undertaking and will have priority over the other court-ordered charge and the Bank's existing security. The Administrative Charge will also have priority over all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise in favour of any person, other than validly perfected and enforceable security interests, if any, in favour of the Leasing Creditors.

**G. Interim Financing Charge**

60. DELP and DOGL are seeking a charge in favour of the Bank to secure amounts advanced by the Bank subsequent to 16 August 2017 (the "**Interim Financing Charge**"). This

charge would be in addition to and supplement the Bank's existing security over DOGL's and DELP's property.

61. The Interim Financing Charge will, if granted, attach to all of DELP's assets, property and undertaking and will have priority over the other court-ordered charge, other than the Administrative Charge, and as well as over the Bank's existing security. The Interim Financing Charge will also have priority over all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise in favour of any person, other than validly perfected and enforceable security interests, if any, in favour of the Leasing Creditors.

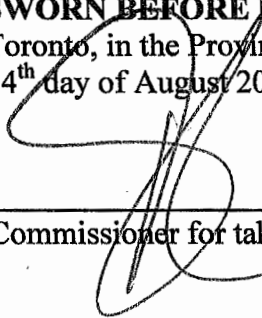
#### **H. Stay Extension**

62. DELP and DOGL are seeking to have the time within which DELP and DOGL are required to file proposals extended to 30 October 2017. This represents an extension of 45 days from the expiry of the initial time within which proposal are to be filed, assuming the Proposal Proceedings are commenced on 15 August 2017.
63. During the 30 day period after the Proposal Proceedings are commenced and during the requested 45-day extension FTI will be conducting the BIA SSP, and DELP and DOGL will be required to operate within the Cash Flow Statement. It is possible during this period that there may be a default under the Forbearance Agreement, in which case the Bank will be entitled to enforce its security by appointing a receiver.

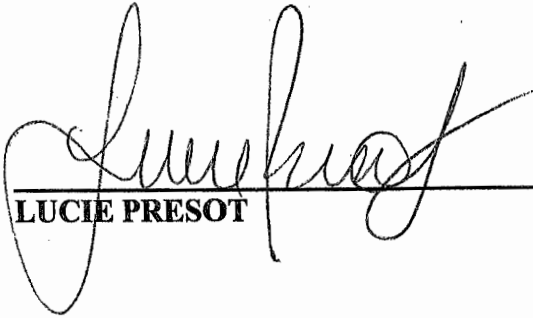
#### **VIII. Service of First Day Motions**

64. The First Day Motions have been served on only the Bank. As noted above, the charges being sought by DELP and DOGL do not seek to "prime" the valid and perfected security of the Leasing Creditors. There may, however, be an Order sought in the future on notice to the Leasing Creditors seeking to "prime" their security interests.

**SWORN BEFORE ME** at the City of Toronto, in the Province of Ontario, this 14<sup>th</sup> day of August 2017.

  
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Commissioner for taking affidavits

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**LUCIE PRESOT**

TOR\_LAW\ 9239229\4

Estate Number/Court File No:

**AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF DUNDEE ENERGY LIMITED PARTNERSHIP OF THE CITY OF TORONTO IN THE PROVINCE OF ONTARIO**

AND

Estate Number/Court File No:

**AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF DUNDEE OIL AND GAS LIMITED OF THE CITY OF TORONTO IN THE PROVINCE OF ONTARIO**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(IN BANKRUPTCY AND INSOLVENCY)  
COMMERCIAL LIST**

**(PROCEEDING COMMENCED AT TORONTO)**

**AFFIDAVIT OF LUCIE PRESOT  
(SWORN 14 AUGUST 2017)**

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**SOLICITORS FOR DELP AND DOGL**

Estate Number: 31-  
Court File Number: 31-

**AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF DUNDEE ENERGY LIMITED PARTNERSHIP**

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(IN BANKRUPTCY AND INSOLVENCY)**  
Commercial List

(PROCEEDING COMMENCED AT TORONTO)

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