

**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  
DUNDEE OIL AND GAS LIMITED**

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**EIGHTH REPORT OF THE MONITOR**  
**FTI CONSULTING CANADA INC.**

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January 23, 2019

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## 1.0 INTRODUCTION

1.1 On August 15, 2017 (the “**Filing Date**”), each of Dundee Energy Limited Partnership (“**DELP**”) and Dundee Oil and Gas Limited (“**DOGL**”) (together, “**Dundee**” or the “**Debtors**”) filed a Notice of Intention to Make a Proposal (together, the “**NOIs**”) pursuant to s. 50.4(1) of the *Bankruptcy and Insolvency Act* (Canada), R.S.C. 1985, c. B-3, as amended. FTI Consulting Canada Inc. (“**FTI**”) was the proposal trustee under the NOIs (in such capacity, the “**Proposal Trustee**”).

1.2 By order dated August 16, 2017 (the “**Sale Process Order**”), a copy of which is attached as **Appendix “A”**, the Ontario Superior Court of Justice (In Bankruptcy and Insolvency) (Commercial List) (the “**Court**”), among other relief:

- a) approved a sale solicitation process (the “**SSP**”) for all of the assets, undertakings and properties of Dundee (collectively, the “**Property**”) under the supervision of the Proposal Trustee;
- b) approved the amended and restated forbearance agreement made as of August 15, 2017 (as amended, the “**Forbearance Agreement**”) between Dundee, Dundee Energy Limited (“**DEL**”) and National Bank of Canada, as lender and agent for the lenders to Dundee (in such capacity, the “**Lender**”); and
- c) authorized DELP to continue to obtain and borrow, repay and re-borrow additional monies under the credit facility (the “**Credit Facility**”) made available to DELP by the Lender pursuant to the amended and restated credit agreement among DELP, as borrower, DEL and DOGL, as guarantors, and the Lender, dated

as of July 31, 2012 (as amended, the “**Credit Agreement**”) subject to the terms of the Forbearance Agreement, in order to finance DELP’s working capital requirements, provided that borrowings by DELP under the Credit Facility shall not exceed the amounts contemplated in the Credit Agreement and the Forbearance Agreement.

1.3 By Order dated February 13, 2018 (the “**Initial Order**”), a copy of which is attached as **Appendix “B”**, the Court, among other relief:

- a) continued the proposal proceedings for DOGL (the “**Proposal Proceedings**”) under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c.C.-36 (as amended, “**CCAA**”);
- b) appointed FTI as the Monitor of DOGL (in such capacity, the “**Monitor**”); and
- c) declared that all orders of the Court granted in the Proposal Proceedings continue to be in full force and effect, except to the extent that such orders are inconsistent with the terms of the Initial Order or the CCAA.

1.4 By order dated June 11, 2018 (the “**Approval and Vesting Order**”), a copy of which is attached as **Appendix “C”**, the Court, *inter alia*, approved the sale to Lagasco Inc. (the “**Buyer**”) of substantially all of Dundee’s assets (the “**Transaction**”) pursuant to the Asset Purchase Agreement dated April 4, 2018 (as amended, the “**APA**”). In addition to approving the Transaction, the Approval and Vesting Order directs the assignment to the Buyer pursuant to section 11.3 of the CCAA of the on-shore leases under which the Ontario Ministry of Natural Resources and Forestry (the “**MNRF**”) is not the lessor (the “**On-shore Leases**”) as well as

certain trade contracts in respect of which consent to assignment has not been obtained (the “**Assigned Trade Contracts**” and together with the On-shore Leases, the “**Assigned Contracts**”). Under the terms of the APA, the consent of MNRF was required to transfer to the Buyer the off-shore Leases under which MNRF is the lessor (the “**Off-shore Leases**” and together with the On-shore Leases, the “**Leases**”).

1.5 On October 24, 2018, Justice Dunphy released Reasons for Decision (the “**October 24 Reasons**”) authorizing the Monitor to consent to an extension of the outside date for Closing under the APA until November 16, 2018 and directing the Monitor to be in a position to forthwith resume the sales process in the event the Transaction fails to close on or before November 16, 2018. A copy of the October 24 Reasons is attached as **Appendix “D”**.

1.6 On November 14, 2018, with the consent of the Monitor and the Lender, the Debtors and the Buyer entered into a fifth amendment to the APA (the “**Fifth APA Amending Agreement**”) which confirmed the adjustments to the Purchase Price under the APA and amended and restated the Leases and related agreements to be assigned to the Purchaser on Closing..

1.7 Pursuant to the Escrow Arrangement, Stay Extension and Sale Process Order granted by the Court on November 14, 2018 (the “**Escrow Order**”), the Court set out the steps required to close the Transaction by November 16, 2018. A copy of the Escrow Order is attached as **Appendix “E”**.

## 2.0 PURPOSE OF THE EIGHTH REPORT

2.1 The purpose of this eighth report of the Monitor (the “**Eighth Report**”) is to advise the Court with respect to the following:

- a) the operations of the Debtors since the date of the Monitor's Seventh Report to the Court ("**Seventh Report**");
- b) the closing of the Transaction and the distribution to the Lender;
- c) the steps required to complete the administration of these CCAA proceedings;
- d) the Monitor's activities since the Seventh Report;
- e) the Debtors' motion for an order (i) extending the Stay Period (as defined in the Initial Order) until the earlier of March 22, 2019 and the date the Monitor files a certificate with the Court confirming that it has completed its administration of these CCAA proceedings (the "**Discharge Certificate**"); (ii) approving the fees and disbursements of the Monitor and its counsel; and (iii) upon the filing of the Discharge Certificate, discharging FTI as Monitor and Proposal Trustee of DOGL and terminating these CCAA proceedings.

### 3.0 TERMS OF REFERENCE

3.1 In preparing the Eighth Report, the Monitor has relied upon unaudited financial information of Dundee's books and records, certain financial information prepared by Dundee and discussions with Dundee's current management ("**Management**").

3.2 Except as described in the Eighth Report:

- a) The Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the information provided to it by Management in a

manner that would comply with Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountants of Canada Handbook; and

- b) The Monitor has not examined or reviewed financial forecasts and projections referred to in the Eighth Report in a manner that would comply with the procedures described in the Chartered Professional Accountants of Canada Handbook.

3.3 Future oriented financial information reported or relied on in preparing the Eighth Report is based on Management's assumptions regarding future events; actual results may vary from forecast and such variations may be material.

3.4 The Monitor has assumed the integrity and truthfulness of the information and explanations presented to it by Management. The Monitor has not independently audited, reviewed, or otherwise attempted to verify the accuracy or completeness of such information. Accordingly, the Monitor expresses no opinion or other form of assurance with respect to the information contained in the Eighth Report. The Monitor assumes no responsibility or liability for any loss or damage incurred by or caused to any person or entity as a result of the circulation, publication, re-production or use of or reliance upon this Eighth Report or for any use which any person or entity makes of the Eighth Report, or any reliance on or a decision made based upon the Eighth Report, other than for the express purposes as set out in this Eighth Report.

3.5 Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars. Capitalized terms not otherwise defined herein have the meanings defined in the Initial Order, APA or Approval and Vesting Order as applicable.



3.6 A copy of the Eighth Report and all other Court materials, orders and endorsements issued in these proceedings are, and will be, available on the Monitor's website at: <http://cfcanada.fticonsulting.com/Dundee/> (the "**Monitor's Website**").

#### 4.0 **BACKGROUND AND UPDATE ON DUNDEE'S OPERATIONS**

4.1 DELP is a limited partnership created pursuant to the *Limited Partnerships Act* (Ontario). DELP operated drilling and wellsite services in Ontario. It held on-shore and off-shore oil and natural gas producing assets, such as wells, drill and service barges, supply boats and a rotary drilling rig.

4.2 DOGL is a company incorporated in Ontario and is the general partner of DELP. Although DOGL held legal title to certain assets on behalf of DELP, DOGL's only asset is its interest in DELP.

4.3 Dundee's on-shore and off-shore wells (the "**Wells**") were located on leased lands and each Lease is tied to one or more Property Index Numbers. Dundee had the ability to access and operate the Wells pursuant to the Leases. There were in excess of 1,800 Leases in total. Dundee maintained an internal registry which monitored and recorded the Wells and Leases and any amounts owing thereunder.

4.4 DELP's primary lender and secured creditor is the Lender. Pursuant to the Initial Order, the Lender is unaffected by the stay of proceedings in the CCAA proceedings except for requiring leave to enforce its security.

4.5 Since the date of the Seventh Report, the Monitor has continued to work closely with Management and has monitored Dundee's business operations. The Debtors and Management assisted the Monitor with Closing the Transaction, addressing post-Closing matters and have continued to report to the Lender as required pursuant to the Credit Agreement and the Forbearance Agreement.

## 5.0 FIFTH APA AMENDING AGREEMENT

5.1 Pursuant to the Fifth APA Amending Agreement, a copy of which is attached hereto as Appendix "E", Dundee and the Buyer agreed that:

- a) the adjustments to the Purchase Price under Article 10 of the APA shall be in the amounts set out in Schedule "A" to the Fifth APA Amending Agreement;
- b) on Closing, the Buyer will pay in cash to the applicable Governmental Authority all unpaid Municipal Taxes outstanding as of the Closing Date; and
- c) the list of Leases set out in Schedule "B" to the APA shall be replaced with the list of Leases attached as Schedule "B" to the Fifth APA Amending Agreement. In order to prepare the Transferred Leases Orders, Discharge Order and Surrendered Leases Order (as each term is defined below), Dundee and the Buyer engaged third party consulting companies to review and schedule each of Dundee's Leases that were to be transferred to the Buyer upon Closing of the Transaction. This provided for an accurate and updated listing of the Leases forming part of Dundee's Property to be transferred to the Buyer upon Closing of

the Transaction. Accordingly, the Parties agreed to update Schedule “B” to the APA.

## 6.0 UPDATE ON CLOSING

6.1 The MNRF approved the transfer to the Buyer of the Well Licenses and provided its consent to the transfer of all Off-shore Leases from Dundee to the Buyer.

6.2 In accordance with the Escrow Order, on November 15, 2018, counsel to the Lender confirmed that it received in escrow the Purchase Price (net of the Deposit and other amounts in accordance with the flow of funds as agreed to by the Parties) (the “**Lender Escrow Funds**”). Also on this date, the Monitor confirmed that it received from the Buyer or retained from the Buyer’s deposit the Cure Costs, Professional Fee Reserve and MNRF Lease royalty payments in escrow. Thereafter, counsel to the Buyer commenced registration of the Applications to Amend Based on Court Order (the “**Lease Transfer Applications**”) pursuant to the Transferred Lease (On-shore) Order and the Transferred Leases (Off-shore) Order, each granted by the Court on November 14, 2018 (together, the “**Transferred Leases Orders**”).

6.3 The Monitor was not made aware of any issue with respect to the registration of the Lease Transfer Applications with the applicable Land Registry Offices and/or Land Titles Offices. Accordingly, there was no need to commence the Title Reversion Registrations, as defined and described in the Escrow Order.

6.4 Pursuant to the Escrow Order, prior to 3:00 p.m. on November 16, 2018: (i) the Buyer provided confirmation to the Dundee, the Monitor and the Lender that all required Lease Transfer Applications had been registered together with the security interest in favour of the

Buyer's lender; and (ii) the Monitor received a certificate from Dundee and the Buyer that all conditions to Closing as set out in the APA had been satisfied or waived. Accordingly, the following actions were taken: (i) the Lender released the Lender Escrow Funds from escrow in favour of the Lender; (ii) the Buyer issued to the applicable Governmental Authority certified cheques in full repayment of the Municipal Taxes owing to each applicable Governmental Authority; (iii) the Buyer's counsel issued to Nadro Marine Services Limited the amount set out in the Direction; and (iv) the Monitor issued the MNRF Lease royalty payments to the MNRF. Forthwith upon the issuance of these payments, and prior to 4:00 p.m. on November 16, 2018, the Monitor delivered the Monitor's Certificate confirming that the Transaction had been completed to the satisfaction of Dundee and the Monitor.

6.5 In accordance with the Escrow Order, after delivery of the Monitor's Certificate, the Buyer's counsel registered (i) the Applications for Vesting Order as required in the Approval and Vesting Order; (ii) the Applications to Amend Based on Court Order as required in the Discharge Order granted on November 14, 2018 (the "**Discharge Order**"); and (iii) the Applications to Amend Based on Court Order as required in the Surrendered Leases Order granted on November 14, 2018 (the "**Surrendered Leases Order**").

## 7.0 POST-CLOSING MATTERS

### *Cure Costs*

7.1 Pursuant to the Approval and Vesting Order, the Monitor was authorized and directed to, within 30 days after Closing, pay the Cure Amounts owing under each Assigned Contract.

Accordingly, by December 7, 2018, the Monitor had completed issuing all 795 Cure Amounts to the Assigned Contract counterparties pursuant to the Debtors' records.

7.2 In total, 143 cheques totaling approximately \$77,000 remain outstanding and have not been returned and 40 cheques totaling approximately \$9,600 were returned to the Monitor by Canada Post. Pursuant to the Escrow Order, if any of these payments remain uncashed or returned as undeliverable as of February 16, 2019 (being three months after the Closing), such Cure Amount will be forever barred as against Dundee without any compensation therefor and such payment shall be delivered to the Lender.

7.3 Given the number and value of uncashed cheques for Cure Costs, the Monitor recommends that the deadline for cashing such cheques be extended until the date these CCAA proceedings are terminated to provide the Monitor additional time to contact the applicable Lease counterparties.

7.4 On September 26, 2018, the Court issued an order approving the key employee incentive program (“**KEIP**”), which authorized Dundee to release KEIP payments post-Closing as described in the Fourth Report of the Monitor dated September 24, 2018. Dundee issued the KEIP amounts on or about November 28, 2018.

### ***Professional Fee Reserve***

7.5 In accordance with the Approval and Vesting Order, the Monitor is holding the Professional Fee Reserve to fund the professional fees and expenses of the Debtors and their legal counsel, the Monitor and its legal counsel and the Lender and its legal counsel. Such funds will be utilized to complete the administration of the CCAA proceedings. Upon the appointment

of FTI, or any other entity or person, as Trustee in Bankruptcy of either or both of the Debtors, the Monitor (if such relief is granted by the Court) will transfer any amounts remaining in the Professional Fee Reserve to FTI, in its corporate capacity, to fund the professional fees and costs of the bankruptcy of either or both of the Debtors.

### ***Charitable Donation***

7.6 In the Endorsement of Justice Dunphy dated November 14, 2018, the Court confirmed the Monitor's recommendation that the following remedy be imposed in connection with the Buyer's breach of confidentiality (as detailed in the Seventh Report):

- a) \$50,000 payment to the Monitor to compensate for costs of the Monitor incurred in investigating and dealing with the confidentiality breach; and
- b) \$100,000 charitable donation to The Hospital for Sick Children.

7.7 Both of these payments have been made by the Buyer.

### ***Post-Closing Invoices***

7.8 Pursuant to the flow of funds as agreed to between the Parties and with the consent of the Lender, the Monitor withheld the following amounts from the Deposit prior to transferring the Deposit to the Debtors (who subsequently transferred it to the Lender) pursuant to the Approval and Vesting Order: (i) a post-filing obligation reserve fund in the amount of \$500,000; and (ii) forecast trade obligations in the amount of \$431,000. The funds in these reserves have been applied by the Debtors in respect of certain invoices received post-Closing relating to the period

prior to Closing. Any amounts remaining in these reserves at the completion of the CCAA proceedings will be delivered to the Lender.

7.9 The Monitor is seeking confirmation that the Buyer has paid the royalties payable under the Leases for the month of November 2018.

### ***Post-Filing Invoices***

7.10 Certain cheques issued by Dundee prior to Closing relating to invoices rendered for services provided post-filing remain uncashed. As of the date of this Eighth Report, approximately 37 cheques remain uncashed totalling \$17,000 relating to post-filing services. The Monitor has issued letters to the relevant contract counterparties advising them to (i) cash the cheque, or (ii) request the Monitor to cancel the circulated cheque and issue a new one.

7.11 The Monitor recommends that the deadline for cashing such cheques be until the date these CCAA proceedings are terminated, after which time any claims in relation to these cheques will be forever barred as against Dundee without any compensation therefor and such payment shall be delivered to the Lender. This will provide the Monitor additional time to continue its efforts to contact contract counterparties that have not cashed outstanding cheques issued prior to Closing until the termination of the CCAA proceedings.

## **8.1 APPROVAL OF PROFESSIONAL FEES**

8.1 FTI, in its capacity as both the Proposal Trustee and (subsequent to the Initial Order) the Monitor, and its counsel, Thornton Grout Finnigan LLP (“TGF”) and Torkin Manes LLP

(“**Torkin**”), have maintained detailed records of their professional time and costs since the issuance of the Sale Process Order.

8.2 The total fees of FTI, in its capacity as Proposal Trustee and Monitor, during the period from August 16, 2017 to January 20, 2019, including estimated time for future discharge activities, total \$2,765,823, together with expenses and disbursements in the sum of \$34,091 and HST in the amount of \$363,989, totalling \$3,163,903, as more particularly described in the Affidavit of Jeffrey Rosenberg sworn January 23, 2019 attached hereto as **Appendix “F”**.

8.3 The total fees of TGF, in its capacity as counsel to both the Proposal Trustee and the Monitor, during the period from June 21, 2017 to January 20, 2019, including estimated time for future discharge activities, total \$1,236,419.50, together with expenses and disbursements in the sum of \$17,548.34 and HST in the amount of \$162,840.40, totalling \$1,416,808.24, as more particularly described in the Affidavit of Grant Moffat sworn January 23, 2019 attached hereto as **Appendix “G”**.

8.4 The total fees of Torkin, in its capacity as counsel to both the Proposal Trustee and the Monitor, during the period from January 23, 2018 to January 20, 2019, including estimated time for future discharge activities, total \$120,068, together with expenses and disbursements in the sum of \$17,275.63 and HST in the amount of \$17,076.58, totalling \$154,420.21, as more particularly described in the Affidavit of Aaron English sworn January 23, 2019 attached hereto as **Appendix “H”**.

8.5 The Monitor is of the view that the fees and disbursements of the Proposal Trustee, the Monitor and counsel are reasonable in the circumstances and should be approved by the Court.



The Lender has confirmed to the Monitor that it consents to payment of the foregoing professional fees.

#### **9.1 DISCHARGE OF PROPOSAL TRUSTEE AND MONITOR**

9.1 FTI, in its capacity as Proposal Trustee of DOGL and as Monitor, seeks its discharge and to terminate these CCAA proceedings upon filing with the Court the Discharge Certificate.

9.2 Pursuant to paragraph 19 of the Initial Order, until further Order of the Court, DELP shall not be deemed to have made an assignment based on its failure to file a proposal with the official receiver notwithstanding s. 50.4(8) of the BIA. Accordingly, the Debtors seek an order confirming that, upon termination of the CCAA proceedings, DELP will no longer enjoy the rights and benefits ascribed to it in the Initial Order and shall be deemed to have made an assignment in bankruptcy in accordance with s. 50.4(8) of the BIA. FTI will act as Trustee in Bankruptcy of DELP.

9.3 Upon the termination of the CCAA proceedings, FTI will no longer continue in its capacity as either Monitor of the Debtors or as Proposal Trustee for DOGL. Accordingly, FTI seeks its discharge in its capacity as the Proposal Trustee for DOGL and as the Monitor upon the Monitor filing the Discharge Certificate with the Court.

9.4 Prior to filing the Discharge Certificate, the Monitor and/or the Debtors must complete the following administrative activities:

- a) Close the Debtors' bank accounts with the Lender;

- b) Confirm whether any Cure Amounts remain as uncashed or returned after February 16, 2019, and if so, complete the transfer of such remaining amounts to the Lender;
- c) Pay any outstanding Professional Fees owing by the Debtors;
- d) File Dundee's final tax returns; and
- e) Collect the \$270,000 amount held as security provided by Dundee to the MNRF, which is currently held by a trustee pursuant to the *Oil, Gas and Salt Resources Act*, R.S.O. 1990, c. P.12. and distribute such amount to the Lender.

9.5 Once the above activities have been completed, the administration of the Debtors' estates will be completed to the satisfaction of the Monitor and the Monitor will file the Discharge Certificate.

## 10.1 CASH FLOW RESULTS RELATIVE TO FORECAST

### Cash Flow Results and Variances

10.1 Cash receipts and disbursements since the Seventh Report for the ten-week period ended January 18, 2019 (the "**Reporting Period**") as compared to the cash flow forecast filed in the Seventh Report (the "**October Cash Flow Forecast**") are presented in the table below:

<b>Dundee Energy Limited Partnership and Dundee Oil &amp; Gas Limited</b>			
<b>Schedule of Actual Receipts and Disbursements Compared to the September Cash Flow Forecast<sup>(1)</sup></b>			
<b>For the Ten-Week Period Ended January 18, 2019</b>			
<b>(\$000's CAD)</b>			
	<u>Actual</u>	<u>Forecast</u>	<u>Variance</u>
Oil	-	-	-
Gas	-	-	-
Other	616	-	616
<b>Total Collections</b>	<b>616</b>	<b>-</b>	<b>616</b>
<i>Operating Expenses</i>			
Production Expenditures	(599)	(823)	224
Landowner Disbursements	-	-	-
Abandonment Costs	(67)	(30)	(37)
<b>Total Operating Expense Disbursements</b>	<b>(666)</b>	<b>(853)</b>	<b>187</b>
<i>Payroll/Other Expenses</i>			
Payroll	(489)	(528)	39
G&A	(192)	(66)	(126)
Interest & Financing Fees	-	-	-
Realized Risk Mgmt. Gain / (Loss)	-	-	-
Restructuring Expenses	(1,467)	(1,920)	453
<b>Total Payroll/Other Expense Disbursements</b>	<b>(2,148)</b>	<b>(2,514)</b>	<b>365</b>
<b>Net Cash Flow</b>	<b>(2,199)</b>	<b>(3,367)</b>	<b>1,168</b>
<b>Opening Cash GL Balance</b>	<b>2,193</b>		
Net Cash Flow	(2,199)		
Void Cheques	19		
<b>Closing Cash Balance</b>	<b>13</b>		
<b>Note 1</b>			
Readers are cautioned to read the Terms of Reference as set out in paragraph 3 in the Eight Report.			

10.2 During the Reporting Period, Dundee's total cash receipts primarily relate to (i) certain amounts from the deposit being retained by Dundee to fund post-Closing obligations in accordance with the flow of funds and with the consent of the Lender; and (ii) funds being held by FTI that have been transferred to Dundee's bank account for vendor disbursements purposes.

10.3 Dundee's total disbursements in the amount of \$2.8M during the Reporting Period primarily relate to funding post-filing/pre-Closing obligations as agreed to between the Parties. The positive variance of \$550,000 primarily relates to timing of disbursements in the normal course of business.

### Credit Facility

10.4 The Credit Facility was terminated upon Closing of the Transaction. The funds distributed, and to be distributed, to the Lender pursuant to the Transaction will not be sufficient to permanently repay the Credit Facility. Accordingly, no funds will be available for distribution to any other creditors of the Debtors.

### 11.0 CASH FLOW FORECAST UPDATE

11.1 The Debtors have prepared a cash flow for the period ending March 22, 2019 (the “**Cash Flow Forecast**”). The Cash Flow Forecast is attached as **Appendix “I”** hereto.

11.2 The Cash Flow Forecast is presented on a weekly basis during the Cash Flow Period and represents Management’s estimate of the projected cash flow during the Cash Flow Period using the probable and hypothetical assumptions set out in the notes to the Cash Flow Forecast (collectively, the “**Cash Flow Assumptions**”).

11.3 The Monitor has reviewed the Cash Flow Forecast to the standard required of a Court-appointed Monitor by s. 23(1)(b) of the CCAA, which requires the Monitor to review the debtor’s cash flow statement as to its reasonableness and report on the reasonableness of the cash flow statement to the Court. Pursuant to this standard, the Monitor’s review of the Cash Flow Forecast consisted of inquiries, analytical procedures and discussions related to information supplied to it by certain key members of Management and employees of Dundee. The Monitor reviewed information provided by Management for the Cash Flow Assumptions.

11.4 The Cash Flow Forecast indicates that the Monitor and Dundee will have sufficient funds in the Professional Fee Reserve to complete administration of the Debtors' estates during the Stay Period and the Cash Flow Period.

11.5 The Cash Flow Forecast has been prepared solely for the purpose described above and readers are cautioned that it may not be appropriate for other purposes.

## 12.0 EXTENSION OF THE STAY PERIOD

12.1 The Stay Period is set to expire on January 30, 2019. The Debtors are seeking an extension of the Stay Period to the earlier of (i) March 22, 2019, and (ii) the date on which the Discharge Certificate is filed with the Court.

12.2 The Monitor supports extending the Stay Period to March 22, 2019 at the latest for the following reasons:

- a) extending the Stay Period is required to enable Dundee and the Monitor to complete the administration of the Debtors' estates subsequent to Closing of the Transaction;
- b) it is forecasted that the Debtors have sufficient funds in the Professional Fee Reserve to complete the administration of their estates;
- c) no creditor would be materially prejudiced by the extension of the Stay Period;
- d) the Lender supports the extension of the Stay Period; and

- e) the Debtors have acted in good faith and with due diligence in these CCAA proceedings since the Initial Order.

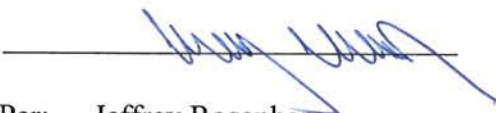
### 13.0 **MONITOR'S CONCLUSIONS AND RECOMMENDATIONS**

13.1 The Monitor recommends that the Court grant the relief sought by the Debtors, including (i) extending the Stay Period to the earlier of (a) March 22, 2019, and (b) the date on which the Discharge Certificate is filed with the Court in order to permit the Monitor and the Debtors to complete the administration of their estates, (ii) approving the professional fees of FTI (in its capacity as Proposal Trustee and Monitor) and the fees of its counsel; (iii) terminating these proceedings and discharging FTI in its capacity as Proposal Trustee of DOGL and Monitor upon filing of the Discharge Certificate; and (iv) releasing and discharging FTI from any liability in connection with the discharge of its duties as the Proposal Trustee of DOGL and Monitor.

\*\*\*\*

All of which is respectfully submitted this 23rd day of January, 2019.

**FTI Consulting Canada Inc., solely in its capacity as  
Monitor of Dundee Oil and Gas Limited and not in its personal  
or corporate capacity**



Per: Jeffrey Rosenberg  
Senior Managing Director

## **APPENDIX “A”**



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

THE HONOURABLE REGIONAL )  
 )  
SENIOR JUSTICE MORAWETZ ) WEDNESDAY, THE 16<sup>th</sup>  
 )  
 ) DAY OF AUGUST, 2017

Estate Number: 31-458352  
Court File No.: 31-458352



**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**

Estate Number: 31-2282778  
Court File No.: 31-2282778

**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.

**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

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:

**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.

**ADMINISTRATIVE CONSOLIDATION**

2. **THIS COURT ORDERS** that the proposal proceedings of DELP (estate number 31-458352) and DOGL (estate number 31-2282778 (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:

Estate Number: 31-458352  
Court File No.: 31-458352

**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**

Estate Number: 31-2282778  
Court File No.: 31-2282778

**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 31-458352 and court file number 31-458352) and hereby dispenses with further filing thereof in the DOGL estate and court file (estate number 31-2282778 and court file number 31-2282778).

## 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

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;
- (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;
- (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.

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.

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 24 and 26 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 24 and 26 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 24 and 26 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) apply to this Court for an order authorizing the Lender to 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 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**

24. **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).

25. **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.

26. **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).

27. **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.

28. **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, 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 Chargees 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.

29. **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**

30. **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**

31. **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>.

32. **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 juridical obligation, and notice requirements, within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

33. **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**

34. **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.

35. **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.

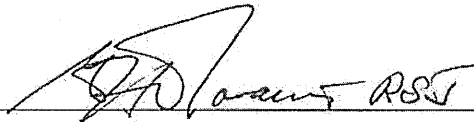
36. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist Dundee, the Proposal Trustee and their respective agents in carrying out the terms of 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.

37. **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.

38. **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.

39. **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

### 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 or 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: 31-458352

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: 31-2282778

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

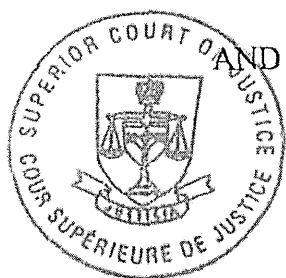
SOLICITORS FOR DELP AND DOGL

## **APPENDIX “B”**

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE ) TUESDAY, THE 13<sup>th</sup>  
JUSTICE DUNPHY ) DAY OF FEBRUARY, 2018

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  
DUNDEE OIL AND GAS LIMITED

**INITIAL ORDER**

THIS APPLICATION, made by Dundee Oil and Gas Limited (“**DOGL**”) on its behalf and as general partner on behalf of Dundee Energy Limited Partnership (“**DELP**”, together the “**Debtors**”), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Lucie Presot sworn February 8, 2018 and the Exhibits thereto, and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Debtors, National Bank of Canada, FTI Consulting Canada Inc. (“**FTI**”) in its capacity as the Proposed Monitor (the “**Monitor**”), and on reading the consent of FTI to act as the Monitor and the Fourth Report of the Proposal Trustee dated February 7, 2018,

## SERVICE

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

## CONTINUANCE UNDER THE CCAA

2. THIS COURT ORDERS AND DECLARES that DOGL is a company to which the CCAA applies and DELP shall enjoy the benefits of the protection and authorizations provided to DOGL by this Order.

3. THIS COURT ORDERS AND DECLARES that effective February 13, 2018, the Debtors' restructuring proceedings (the "**Proposal Proceedings**") commenced under Part III of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3 (as amended) (the "**BIA**") are hereby taken up and continued under the CCAA and that as of such date, the provisions of Part III of the BIA shall have no further application to the Debtors, save that any and all steps, agreements and procedures validly taken, done or entered into by the Debtors during the Proposal Proceedings shall remain valid and binding notwithstanding the continuation of the Proposal Proceedings and the commencement of the within CCAA proceedings, including, without limitation (a) the sale solicitation process ("**BIA SSP**") approved in the Order of Regional Senior Justice Morawetz dated August 16, 2017, as amended (the "**August 16 Order**"); (b) any assignment of leases or other agreements given or entered into by the Debtors during the Proposal Proceedings as amended from time to time; and (c) any agreements entered into with Nadro Marine Services Limited.

4. THIS COURT ORDERS AND DECLARES that all capitalized terms not otherwise defined in this Order have the meanings attributed to them in the August 16 Order.

5. THIS COURT ORDERS AND DECLARES that, subject to further order of this Court, all orders of the Court granted in the Proposal Proceedings shall continue to be in full force and effect, except to the extent that such orders are inconsistent with the terms of this Order or the CCAA.

6. THIS COURT ORDERS that the Monitor is authorized and directed to continue to carry out and fulfill each provision of the August 16 Order that pertains to the Proposal Trustee including, without limitation, the BIA SSP. The Monitor shall have the benefit of all rights and protections granted to the Proposal Trustee under the August 16 Order in carrying out its terms and, unless the context otherwise requires, all references to "Proposal Trustee" in the August 16 Order shall mean the Monitor from and after the date of this Order, except to the extent inconsistent with the terms of this Order or the CCAA.

#### **PLAN OF ARRANGEMENT**

7. THIS COURT ORDERS that the Debtors shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**").

#### **POSSESSION OF PROPERTY AND OPERATIONS**

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

9. THIS COURT ORDERS that, subject to the terms of the Forbearance Agreement that require the Debtors to comply with the Cash Flow Statements, the Debtors shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in

the ordinary course of business and consistent with existing compensation policies and arrangements; and

- (b) the fees and disbursements of any Assistants retained or employed by the Debtors in respect of these proceedings, at their standard rates and charges.

10. THIS COURT ORDERS that, except as otherwise provided to the contrary herein and subject to the terms of the Forbearance Agreement that require the Debtors to comply with the Cash Flow Statements, the Debtors shall be entitled but not required to pay all reasonable expenses incurred by the Debtors in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and
- (b) payment for goods or services actually supplied to the Debtors following the date of this Order.

11. THIS COURT ORDERS that the Debtors shall from and after the date of this Order remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Debtors in connection with the sale of goods and services by the Debtors, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior



to the date of this Order but not required to be remitted until on or after the date of this Order, and

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

12. THIS COURT ORDERS that until a real property lease is assigned or disclaimed in accordance with the CCAA, the Debtors shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between either Debtor, as applicable, and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, in accordance with past practice or on the terms pursuant to the lease. On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

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

## **RESTRUCTURING**

14. THIS COURT ORDERS that the Debtors shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as defined below), and with the prior written consent of the Lender, have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of their business or operations,
- (b) terminate the employment of such of their employees or temporarily lay off such of their employees as they deems appropriate; and
- (c) pursue all avenues of refinancing of their Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing (for greater certainty, an assignment of the Lender's debt and security to another party shall not constitute a material refinancing requiring Court approval),

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

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

16. THIS COURT ORDERS that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the relevant Debtor and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may

have against the Debtors in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

#### **NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY**

17. THIS COURT ORDERS that, subject to paragraph 18(v) hereof, until and including March 13, 2018, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Debtors or the Monitor, or affecting the Business or the Property, except with the written consent of the Debtors and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Debtors or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

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

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

19. THIS COURT ORDERS that, until further Order of this Court, DELP shall not be deemed to have made an assignment based on its failure to file a proposal with the official receiver notwithstanding s. 50.4(8) of the BIA.

## **NO INTERFERENCE WITH RIGHTS**

20. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtors, except with the written consent of the Debtors and the Monitor, or leave of this Court.

## **CONTINUATION OF SERVICES**

21. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the Debtors or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Debtors, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Debtors, and that the Debtors shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Debtors in accordance with normal payment practices of the Debtors or such other practices as may be agreed upon by the supplier or service provider and each of the Debtors and the Monitor, or as may be ordered by this Court. Dundee Corporation shall continue to make available all computer systems and other services provided to the Debtors in accordance with normal practices.

## **NON-DEROGATION OF RIGHTS**

22. THIS COURT ORDERS that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Debtors. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

## **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

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

## **APPOINTMENT OF MONITOR**

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

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

- (a) monitor the Debtors' receipts and disbursements;
- (b) take all steps necessary to implement the BIA SSP including all steps required to close any sale transaction approved under the BIA SSP, in these proceedings or under the Proposal Proceedings;
- (c) report to the Lender on matters related to the Debtors' Business, Property or the BIA SSP;

- (d) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, the BIA SSP and such other matters as may be relevant to the proceedings herein;
- (e) assist the Debtors, to the extent required by the Debtors, in their dissemination, to the Lender and its counsel as required by the Lender of financial and other information as agreed to between the Debtors and the Lender which may be used in these proceedings including reporting on a basis to be agreed with the Lender;
- (f) advise the Debtors in their preparation of the Debtors' cash flow statements and reporting required by the Lender, which information shall be reviewed with the Monitor and delivered to the Lender and its counsel on a periodic basis, but not less than weekly, or as otherwise provided in the Forbearance Agreement or agreed to by the Lender;
- (g) subject to the prior consent of the Lender, advise the Debtors in their development of the Plan and any amendments to the Plan;
- (h) subject to the prior consent of the Lender, assist the Debtors, to the extent required by the Debtors, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (i) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Debtors, to the extent that is necessary to adequately assess the Debtors' business and financial affairs or to perform its duties arising under this Order;
- (j) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (k) perform such other duties as are required by this Order or by this Court from time to time.

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

27. THIS COURT ORDERS that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, the *Oil and Salt Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

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

29. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order or the

BIA SSP, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

30. THIS COURT ORDERS that the Proposal Trustee, counsel to the Proposal Trustee, the Monitor, counsel to the Monitor and counsel to the Debtors shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Debtors as part of the costs of these proceedings. The Debtors are hereby authorized and directed to pay the accounts of the Proposal Trustee, counsel for the Proposal Trustee, the Monitor, counsel to the Monitor and counsel for the Debtors on a weekly basis or on such other basis as agreed between the Debtors and the applicable payee, with the consent of the Lender.

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

#### **FORBEARANCE AGREEMENT**

32. THIS COURT ORDERS that paragraphs 17-21 of the August 16 Order approving the Forbearance Agreement as amended by a First Amending Agreement dated as of December 5, 2017, a Second Amending Agreement dated as of December 19, 2017, a Third Amending Agreement and Waiver dated January 24, 2018, as amended and restated pursuant to a Second Amended and Restated Forbearance Agreement dated as of February 13, 2018 (collectively, the “**Forbearance Agreement**”) granting the Proposal DIP Charge (as defined below) and directing the Debtors to comply with the terms of the Forbearance Agreement continue in full force and effect.

33. DELETED

34. THIS COURT ORDERS AND DECLARES that the payments made by the Debtors pursuant to the August 16 Order, this Order, the Credit Agreement, the Forbearance Agreement, the other Credit Documents or any of the Definitive Documents, and the granting of the Proposal



DIP Charge and CCAA DIP Charge (each as defined below), 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 IN THE PROPOSAL PROCEEDINGS**

35. THIS COURT ORDERS that the Directors' Charge (the "**Proposal Directors' Charge**"), Administration Charge (the "**Proposal Administration Charge**"), and DIP Charge (the "**Proposal DIP Charge**"), each granted in the August 16 Order pursuant to paragraphs 12-16 and 20 inclusive, shall continue to be in force and effect in these proceedings pursuant to the CCAA with the priorities provided for in paragraph [44] hereof.

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

36. THIS COURT ORDERS that the Debtors shall indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the Debtors 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.

37. THIS COURT ORDERS that the directors and officers of the Debtors shall be entitled to the benefit of and are hereby granted a charge (the "**CCAA Directors' Charge**") on the Property, which charge, together with the Proposal Directors' Charge, shall not exceed an aggregate amount of \$50,000, as security for the indemnity provided in paragraph [36] of this Order. The CCAA Directors' Charge shall have the priority set out in paragraph [44] herein.

38. 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 CCAA Directors' Charge, and (b) the Debtors' directors and officers shall only be entitled to the benefit of the CCAA 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 [36] of this Order.

## DIP FINANCING

39. THIS COURT ORDERS that, in addition to the existing liens, charges, mortgages and encumbrances in favour of the Lender, as security for all obligations of the Debtors to the Lender relating to advances made to the Debtors under the Credit Agreement and Forbearance Agreement from and after the date of this Order, including the Proposal DIP Charge, the Lender shall be entitled to the benefit of and is hereby granted a charge (the “**CCAA DIP Charge**”) on the Property, which CCAA DIP Charge shall not secure an obligation that exists before this Order is made. The CCAA DIP Charge shall have the priority set out in paragraph [44] hereof.

40. THIS COURT ORDERS that the Debtors are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the “**CCAA Definitive Documents**” and together with the term “**Definitive Documents**” as defined in the August 16 Order, the “**Definitive Documents**”), as are contemplated by the Credit Agreement, Forbearance Agreement or as may be reasonably required by the Lender pursuant to the terms thereof, and the Debtors are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities and obligations to the Lender under and pursuant to the Credit Agreement, Forbearance Agreement and the CCAA Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

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

- (a) the Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the CCAA DIP Charge or any of the Definitive Documents;
- (b) 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:
  - (i) immediately cease making advances to the Debtors;
  - (ii) set off and/or consolidate any amounts owing by the Lender to the Debtors against the obligations of the Debtors 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

(iii) apply to this Court for an order authorizing the Lender to exercise any and all of its rights and remedies against the Debtors or the Property under or pursuant to the Credit Agreement, the Forbearance Agreement, any other Credit Documents (as defined in the Credit Agreement) or the Definitive Documents, the Proposal DIP Charge, the CCAA DIP Charge, or the *Personal Property Security Act* (Ontario) (the "PPSA") 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 the Debtors and for the appointment of a trustee in bankruptcy of the Debtors; and

(c) the foregoing rights and remedies of the Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Debtors or the Property.

42. THIS COURT ORDERS AND DECLARES that the Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Debtors under the CCAA.

#### **CCAA ADMINISTRATION CHARGE**

43. THIS COURT ORDERS that the Monitor, counsel to the Monitor and the Debtors' counsel shall be entitled to the benefit of and are hereby granted a charge (the "**CCAA Administration Charge**") on the Property, which charge, together with the Proposal Administration Charge, shall not exceed an aggregate amount of \$250,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The CCAA Administration Charge shall have the priority set out in paragraph [44] hereof.

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

44. THIS COURT ORDERS that the priorities of the Proposal Directors' Charge, CCAA Directors' Charge, Proposal Administration Charge, CCAA Administration Charge, Proposal DIP Charge and CCAA DIP Charge, as among them, shall be as follows:

First (*pari passu*) –the Proposal Administration Charge and the CCAA Administration Charge (to the maximum aggregate amount of \$250,000);

Second (*pari passu*) – the Proposal DIP Charge and the CCAA DIP Charge;

Third – Security granted to the Lender under or pursuant to the Credit Agreement, the Forbearance Agreement and the Credit Documents; and

Fourth (*pari passu*) –the Proposal Directors' Charge and CCAA Directors' Charge (to the maximum aggregate amount of \$50,000).

45. THIS COURT ORDERS that the filing, registration or perfection of the CCAA Directors' Charge, the CCAA Administration Charge and the CCAA 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.

46. THIS COURT ORDERS that each of the CCAA Directors' Charge, the CCAA Administration Charge and the CCAA DIP Charge (all as constituted and defined herein) shall constitute a charge on the Property and, subject to paragraph [44] of this Order, 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, except for any security that qualifies as a purchase-money security interest pursuant to the PPSA.

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

48. THIS COURT ORDERS that the CCAA Directors' Charge, the CCAA Administration Charge, the Credit Agreement, the Forbearance Agreement, the Definitive Documents and the CCAA DIP Charge 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 thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Debtors, 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, Credit Agreement, Credit Documents or any of the Definitive Documents shall create or be deemed to constitute a breach by the Debtors of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges, or the execution, delivery or performance of the Forbearance Agreement, Credit Agreement, Credit Documents or any of the Definitive Documents; and
- (c) the payments made by the Debtors pursuant to this Order, the Forbearance Agreement, Credit Agreement, Credit Documents or any of the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

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

#### **SERVICE AND NOTICE**

50. THIS COURT ORDERS AND DECLARES that, given the noticing procedures established and completed in the Proposal Proceedings, the Monitor shall not be required to (i) publish any notices, (ii) send any notices to known creditors, or (iii) prepare and publish a list

showing the names and addresses of those creditors and the estimated amounts of those claims. The Monitor shall upload all documents filed in connection with this Application on the Case Website listed in paragraph [50] hereof.

51. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that the Case Website (the “**Case Website**”) established in the Proposal Proceedings shall be used in these proceedings under the CCAA in accordance with the Protocol, which is accessible at the following URL ‘<<http://cfcanada.fticinsulting.com/Dundee/>>’.

52. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Debtors and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtors' creditors or other interested parties at their respective addresses as last shown on the records of the Debtors 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**

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

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

55. 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 Debtors, 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 Debtors 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 Debtors and the Monitor and their respective agents in carrying out the terms of this Order.

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

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

58. 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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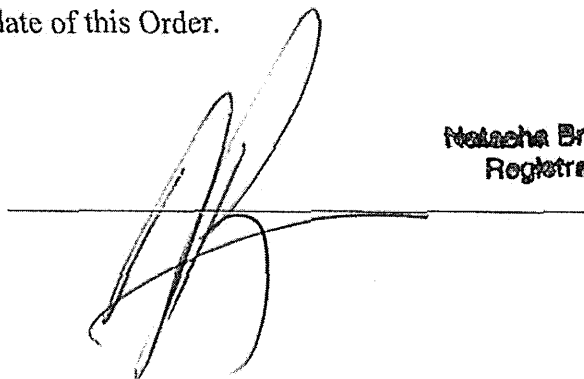
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Natasha Brown  
Registrar



**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 DUNDEE OIL AND GAS LIMITED**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at TORONTO

**INITIAL ORDER**

**GOWLING WLG (CANADA) LLP**  
Barristers and Solicitors  
1 First Canadian Place, Suite 1600  
100 King Street West  
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**E. PATRICK SHEA (LSUC. No. 39655K)**  
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Solicitors for the Applicant

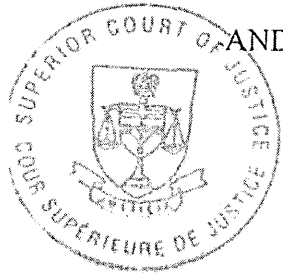


## **APPENDIX “C”**

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

THE HONOURABLE )  
JUSTICE DUNPHY )  
)  
)  
)  
)  
MONDAY, THE 11<sup>th</sup>  
DAY OF JUNE, 2018

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  
DUNDEE OIL AND GAS LIMITED

**APPROVAL AND VESTING ORDER**

**THIS MOTION**, made by Dundee Oil and Gas Limited (“**DOGL**”) on its behalf and as general partner on behalf of Dundee Energy Limited Partnership (“**DELP**” and together with **DOGL**, the “**Debtors**”) for an order approving the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale between the Debtors (the “**Seller**”) and Lagasco Inc. (the “**Purchaser**”) dated April 4, 2018 (as amended by agreement dated May 17, 2018 and as may be further amended from time to time, the “**Sale Agreement**”) and appended to the Third Report of the Monitor dated May 9, 2018 (the “**Third Report**”), and vesting in the Purchaser all of the Seller’s right, title and interest in and to the assets described in the Sale Agreement (the “**Purchased Assets**”), was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Third Report of FTI Consulting Canada Inc. dated May 9, 2018, in its capacity as the Court-appointed monitor (the “**Monitor**”), the Supplement to the Third Report of the Monitor dated May 18, 2018 (the “**Supplemental Report**”), the Affidavit of Jane Lowrie sworn May 9, 2018, the

Supplementary Affidavit of Jane Lowrie sworn June 5, 2018 (the “**Supplemental Lowrie Affidavit**”), the Affidavit of Jordan Zakkai sworn June 7, 2018, and on hearing the submissions of counsel for the Monitor, the Debtors, the Purchaser, National Bank of Canada (the “**Bank**”) and the Crown, no one appearing for any other person on the service list, although properly served as appears from the affidavits of Rachel Bengino sworn on May 10, 2018 and May 18, 2018, each filed:

1. **THIS COURT ORDERS AND DECLARES** that service of the Third Report, Supplemental Report, Motion Record and Supplemental Motion Record herein, either by way of the Assignment and Distribution Notice, the Newspaper Notice, the Trade Contract Assignment Notices (as each term is defined in the Third Report) or by actual service, is effective and sufficient notice of the relief sought by the Debtors in this Motion and service of the Motion Record is hereby validated and further service thereof is hereby dispensed with.
2. **THIS COURT ORDERS** that any capitalized term not otherwise defined herein has the meaning attributed to it in the Sale Agreement.
3. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Seller is hereby ratified and approved, with such amendments as the Seller may deem necessary and as are approved by the Monitor and the Bank, including amendments to Schedules “A” and “B” to the Sale Agreement (for greater certainty, no Well may be removed from Schedule “A” without the consent of the MNRF). The Seller is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.
4. **THIS COURT ORDERS** that the Monitor’s selection of the Purchaser as the Successful Bidder is hereby approved.

5. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Monitor's certificate to the Purchaser substantially in the form attached as Schedule "A" hereto (the "**Monitor's Certificate**"), all of the Seller's right, title and interest in and to the Purchased Assets described in the Sale Agreement shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Regional Senior Justice Morawetz dated August 16, 2017 in connection with the Debtors' Notices of Intention to Make a Proposal pursuant to s. 50.4(1) of the *Bankruptcy and Insolvency Act* (Canada) (the "**NOI Proceedings**"); (ii) any encumbrances or charges created by the Order of the Honourable Justice Dunphy dated February 13, 2018 (the "**Initial Order**"); (iii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario), *Land Titles Act* (Ontario) or any other personal or real property registry system; and (iv) those Claims listed on Schedules C-1 to C-6, inclusive, hereto (all of which are collectively referred to as the "Encumbrances", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule D) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.
6. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division of Elgin (#11) of an Application for Vesting Order in the form prescribed by the Land Titles Act and/or the Land Registration Reform Act, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule B-1 hereto (the "**Elgin Real Property**") in fee simple, and is hereby directed to delete and expunge from title to the Elgin Real Property all of the Claims listed in Schedule C-1 hereto.

7. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division of Norfolk (#37) of an Application for Vesting Order in the form prescribed by the Land Titles Act and/or the Land Registration Reform Act, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule B-2 hereto (the “**Norfolk Real Property**”) in fee simple, and is hereby directed to delete and expunge from title to the Norfolk Real Property all of the Claims listed in Schedule C-2 hereto.
8. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division of Essex (#12) of an Application for Vesting Order in the form prescribed by the Land Titles Act and/or the Land Registration Reform Act, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule B-3 hereto (the “**Essex Real Property**”) in fee simple, and is hereby directed to delete and expunge from title to the Essex Real Property all of the Claims listed in Schedule C-3 hereto.
9. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Registry Division and/or Land Titles Division of Haldimand (#18) of an Application for Vesting Order in the form prescribed by the Land Titles Act and/or the Land Registration Reform Act, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule B-4 hereto (the “**Haldimand Real Property**”) in fee simple, and is hereby directed to delete and expunge from title to the Haldimand Real Property all of the Claims listed in Schedule C-4 hereto.
10. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division of Niagara South (#59) of an Application for Vesting Order in the form prescribed by the Land Titles Act and/or the Land Registration Reform Act, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule B-5 hereto (the “**Niagara Real Property**”) in fee simple, and is hereby directed to delete and expunge from title to the Niagara Real Property all of the Claims listed in Schedule C-5 hereto.

11. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division of Chatham-Kent (#24) of an Application for Vesting Order in the form prescribed by the Land Titles Act and/or the Land Registration Reform Act, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule B-6 hereto (the “Chatham-Kent Real Property”) in fee simple, and is hereby directed to delete and expunge from title to the Chatham-Kent Real Property all of the Claims listed in Schedule C-6 hereto.
12. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Monitor’s Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.
13. **THIS COURT ORDERS AND DIRECTS** the Monitor to file with the Court a copy of the Monitor’s Certificate, forthwith after delivery thereof.
14. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Seller is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Seller’s records pertaining to the Seller’s past and current employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Seller.
15. **THIS COURT ORDERS** that, notwithstanding:
  - (a) the pendency of these proceedings;

- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Seller and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Seller;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Seller and shall not be void or voidable by creditors of the Seller, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

#### ASSIGNMENT OF AGREEMENTS

16. **THIS COURT ORDERS** that, subject to paragraph 23 of this Order, upon delivery of the Monitor's Certificate, all of the rights and obligations of the Seller under (i) the Leases (other than (a) the MNRF Leases; and (b) those Leases under which either Whittle Farms Inc., Marilyn Whittle or Harold Whittle is the lessor (collectively with the MNRF Leases, the "**Excluded Leases**") and (ii) the agreements set out in Schedule E hereto, which are Assumed Contracts under the Sale Agreement (together with the Leases other than the Excluded Leases, the "**Assigned Contracts**") shall be assigned to and assumed by the Purchaser, or such party as the Purchaser may designate prior to Closing (provided, however, that such designated party agrees to be bound by the terms of such Assigned Contracts and the Purchaser is not released from any obligations or liability thereunder), pursuant to section 11.3 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, C. C-36, as amended ("**CCAA**").
17. **THIS COURT ORDERS** that that the assumption by the Purchaser of the rights and obligations of the Seller under the Assigned Contracts and the assignment of the Assigned Contracts to the

Purchaser pursuant to the CCAA and this Order is valid and binding upon all of the counterparties to the Assigned Contracts notwithstanding any restriction or prohibition contained in any such Assigned Contract relating to the assignment thereof, including any provision requiring the consent of any party to the assignment, and any counterparty to such Assigned Contract shall be forever barred, enjoined and estopped from enforcing the same against the Purchaser or Seller.

18. **THIS COURT ORDERS** that, except as otherwise addressed herein, the Seller's right, title and interest in the Assigned Contracts shall vest absolutely in the Purchaser free and clear of all encumbrances other than the Permitted Encumbrances.
19. **THIS COURT ORDERS** that each counterparty to the Assigned Contracts is prohibited from exercising any right or remedy under the Assigned Contracts by reason of any defaults thereunder arising from the assignment of the Assigned Contracts, the insolvency of the Seller, the commencement of the NOI Proceedings, the commencement of these CCAA proceedings, or any failure of the Sellers to perform a non-monetary obligation under the Assigned Contracts.
20. **THIS COURT ORDERS** that on Closing, the Purchaser shall pay to the Monitor the amount owing by the Debtors to the counterparty under each Assigned Contract as at March 31, 2018, together with any amounts owing by the Debtors under each such Assigned Contract from April 1, 2018 until Closing (the "**Cure Amount**"). The Cure Amount for each Assigned Contract shall be determined by the Monitor in consultation with the Debtors and held by the Monitor in trust in one non-interest bearing account (the "**Cure Amounts Reserve**") solely for the benefit of the counterparty to the Assigned Contract to which such Cure Amount relates.
21. **THIS COURT ORDERS** that the Cure Amount for each Assigned Contract (collectively, the "**Cure Amounts**") does not constitute Property or proceeds of the Property. The Monitor is authorized and directed to, within 30 days after Closing, pay from the Cure Amounts Reserve the Cure Amount (other than any Disputed Cure Amount, as defined below) with respect to each



applicable Assigned Contract, in full and final satisfaction of any Cure Amount owing to the counterparty to the applicable Assigned Contract.

22. **THIS COURT ORDERS** that, notwithstanding the foregoing, in addition to all obligations under the Assigned Contracts arising from and after the Closing Date, for which the Purchaser shall be liable, the Purchaser shall be liable for and shall timely pay to the counterparties under the Assigned Contracts any and all charges under the Assigned Contracts that may have accrued prior to Closing or are attributable or related to a period prior to Closing, but which do not come due until on or after the Closing Date by their terms.
  
23. **THIS COURT ORDERS** that if, on or before May 22, 2018, a counterparty to an Assigned Contract has notified the Monitor in writing in the manner set out in the Assignment and Distribution Notices or the Trade Contract Assignment and Distribution Notices, as applicable (as each such term is defined in the Third Report) (an “**Objecting Counterparty**”) that it objects to the Cure Amount payable under its Assigned Contract (a “**Disputed Assigned Contract**”), the Purchaser, in consultation with the Monitor, is authorized and empowered to elect to (a) not assume the Disputed Assigned Contract, in which case the Purchaser shall not be obligated to pay the applicable Cure Amount to the Monitor on Closing, provided that there shall be no adjustment to the Purchase Price; (b) pay to the Monitor on Closing the Cure Amount claimed by or otherwise acceptable to the Objecting Party for disbursement to the Objecting Counterparty in accordance with paragraph 21 of this Order; or (c) postpone for a period of not more than 60 days after Closing the assumption of the Disputed Assigned Contract pending the resolution of such dispute among the Objecting Counterparty and the Purchaser or by further Order of the Court, in which case the Cure Amount claimed by the Objecting Counterparty (the “**Disputed Cure Amount**”) shall be paid by the Purchaser to the Monitor on Closing and held by the Monitor as part of the Cure Amounts Reserve pending resolution of such dispute or further order of the Court. The Purchaser may, at any time after Closing, by written notice to the Monitor and the Objecting Counterparty, elect not

to assume a Disputed Assigned Contract subject to dispute as described in subparagraph (c) above, in which case the Monitor shall return the Disputed Cure Amount to the Purchaser, provided that there shall be no adjustment to the Purchase Price. Notwithstanding the dispute, the assignment and assumption of the Disputed Assigned Contract pursuant to paragraph 17 of this Order is valid and binding in all respects and the Objecting Counterparty's recourse is limited to the Disputed Cure Amount unless the Purchaser elects not to assume the Disputed Assigned Contract, in which case the assignment and assumption of the Disputed Assigned Contract shall cease to be effective, provided that there shall be no adjustment to the Purchase Price. If it is determined that, in accordance with this paragraph 23, the Objecting Counterparty is not entitled to the full amount of the Disputed Cure Amount, the Monitor is hereby directed to distribute the portion, if any, of the Disputed Cure Amount to which such Objecting Counterparty is entitled and return any excess portion of the Disputed Cure Amount to the Purchaser.

24. **THIS COURT ORDERS** the Monitor, on behalf of the Seller, to send a copy of this Order to all of the counterparties to the Assigned Contracts other than the Leases. The notice set out in the Assignment and Distribution Notice specifying that this Order, if granted, will be posted on the Monitor's Website on May 23, 2018, shall be deemed to constitute sufficient notice to the Lease counterparties pursuant to s. 11.3(5) of the CCAA.
25. **THIS COURT ORDERS AND DIRECTS** the Seller to, prior to Closing, seek a further Order of the Court directing each applicable Land Registry Office and/or Land Titles Office to enter the Purchaser as the lessee under each of the applicable Leases and to delete and expunge from the title to the freehold properties against which notices of the Leases and related instruments are registered all of the instruments registered in favour of the Bank in connection with the Leases, with all other instruments registered against the title to any one or more of such properties constituting Permitted Encumbrances.

**RESERVES AND DISTRIBUTIONS TO NATIONAL BANK OF CANADA**

26. **THIS COURT ORDERS** that the Purchaser is directed on Closing to pay all outstanding royalties owing with respect to the MNRF Leases to the Monitor, which the Monitor shall immediately distribute to the MNRF at the direction of the MNRF and does not constitute Property or proceeds of the Property.
27. **THIS COURT ORDERS** that the Purchaser is directed on Closing to either (a) pay up to \$235,000 (the "*Miss Libby Reserve*"), being a portion of the Purchase Price allocated to the sale of *Miss Libby*, to the Bank and/or Nadro Marine Services Limited in accordance with a written direction from the Bank and Nadro (the "**Direction**"); or (b) if the Direction has not been delivered to the Purchaser at least three Business Days prior to Closing, pay the Miss Libby Reserve to the Monitor, which shall be held by the Monitor pending receipt of a Direction or further Order of the Court.
28. **THIS COURT ORDERS** that the Purchaser is directed on Closing to pay to the Monitor \$200,000 of the Purchase Price to fund a reserve (the "**Professional Fee Reserve**") which shall be utilized to fund the professional fees and expenses of the Debtors and their legal counsel, the Monitor and its legal counsel and the Bank and its legal counsel (collectively, the "**Professional Fees**"). The Monitor is authorized and empowered, without further Order of the Court, to disburse from the Professional Fee Reserve, from time to time, amounts owing by the Debtors in respect of Professional Fees. Any amounts remaining in the Professional Fee Reserve after the completion of these CCAA proceedings and the discharge of the Monitor shall be distributed to the Bank.
29. **THIS COURT ORDERS** that, on Closing, the Purchaser is hereby irrevocably authorized and directed to pay to the Bank the net amount of the cash portion of the Purchase Price, net of the Deposit, which amount shall be on account of first, the obligations owing by the Debtors to the Bank under and pursuant to a second amended and restated forbearance agreement dated as of February 13, 2018, as amended (the "**DIP Obligations**") and second, the secured obligations owing

by the Debtors to the Bank under and pursuant to an amended and restated credit agreement dated as of the July 31, 2012, as amended (the “**Secured Obligations**”). The Monitor is hereby authorized and directed, without further Order of the Court, to (i) on Closing, transfer the Deposit, net of the *Miss Libby* Reserve and the Professional Fee Reserve (the “**Net Deposit Amount**”) to the Seller’s account with the Bank, and (ii) transfer any and all future receipts or proceeds (the “**Future Receipts**”) that may be received by the Monitor after Closing to the Seller’s account with the Bank. Immediately upon receipt by the Seller, the Seller is hereby irrevocably ordered and directed to transfer the Net Deposit Amount and the Future Receipts to the Bank up to the maximum aggregate amount of the DIP Obligations and the Secured Obligations without deduction or set off.

#### **CHARGES**

30. **THIS COURT ORDERS** that, upon Closing, the Proposal Administration Charge and CCAA Administration Charge (each as defined in the Initial Order) shall be reduced to an aggregate amount of \$200,000 and shall continue to charge the Property, including the Professional Fee Reserve, from and after the Closing Date.
31. **THIS COURT ORDERS** that, upon Closing, the Proposal DIP Charge, the CCAA DIP Charge, the Proposal Directors’ Charge and the CCAA Directors’ Charge (each as defined in the Initial Order) are hereby terminated, released and discharged.

#### **STAY EXTENSION**

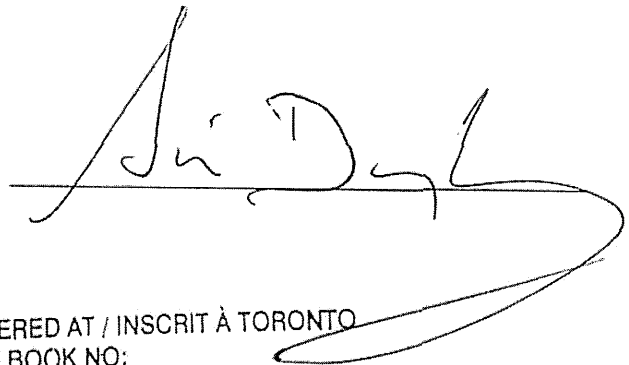
32. **THIS COURT ORDERS** that the Stay Period as ordered and defined in paragraph 17 of the Initial Order is hereby extended until and including September 28, 2018.

#### **GENERAL**

33. **THIS COURT ORDERS** that the Summary of Final Bids, attached as Confidential Appendix “A” to the Third Report, the unredacted Sale Agreement, attached as Confidential Appendix “B” to the

Third Report, and the Purchaser's balance sheet, attached as Confidential Exhibit "1" to the Supplemental Lowrie Affidavit are hereby sealed pending Closing and shall not form part of the public record.

34. **THIS COURT ORDERS** that, in addition to the rights and protections afforded to the Monitor under the Initial Order, the Monitor shall not be liable for any act or omission on the part of the Monitor pertaining to the discharge of its duties under this Order, save and except any claim or liability arising out of any gross negligence or wilful misconduct on the part of the Monitor. Nothing in this Order shall derogate from the protections afforded to the Monitor by the CCAA, any other federal or provincial applicable law, the Initial Order or any other orders in this proceeding.
35. **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 Seller and the Monitor 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 Seller and the Monitor as may be necessary or desirable to give effect to this Order or to assist the Seller and the Monitor in carrying out the terms of this Order.



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LE / DANS LE REGISTRE NO:

JUN 11 2018

PER / PAR:



**SCHEDULE "A"**

Court File No. CV-18-591908-00CL

**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  
DUNDEE OIL AND GAS LIMITED

**MONITOR'S CERTIFICATE**

**RECITALS**

A. Pursuant to an Order of Justice Dunphy of the Ontario Superior Court of Justice (the "**Court**") dated February 13, 2018, FTI Consulting Canada Inc. was appointed as the monitor (the "**Monitor**") of Dundee Oil and Gas Limited ("**DOGL**").

B. Pursuant to an Order of the Court dated June 11, 2018, the Court approved the agreement of purchase and sale made as of April 4, 2018 (as amended by agreement dated May 17, 2018 and as may be further amended from time to time, the "**Sale Agreement**"), between Dundee Energy Limited Partnership, by its general partner, DOGL, and DOGL (together, the "**Seller**"), and Lagasco Inc. (the "**Purchaser**") and provided for the vesting in the Purchaser of the Seller's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Monitor to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in articles 11 and 12 of the Sale Agreement have been satisfied or

waived by the Seller or the Purchaser, as applicable; and (iii) the sale transaction has been completed to the satisfaction of the Seller and the Monitor.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE MONITOR CERTIFIES the following:

1. The Purchaser has paid and the Seller has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in articles 11 and 12 of the Sale Agreement have been satisfied or waived by the Seller and the Purchaser; and
3. The sale transaction has been completed to the satisfaction of the Seller and the Monitor.
4. This Certificate was delivered by the Monitor at \_\_\_\_\_ [TIME] on \_\_\_\_\_, 2018.

**FTI CONSULTING CANADA INC.,  
solely in its capacity as Monitor of  
Dundee Oil and Gas Limited and not in  
its personal or corporate capacity**

Per: \_\_\_\_\_  
Name:  
Title:

SCHEDULE B-1

PIN 35151-0124 (LT)

LOTS L, M, PLAN 39 SOUTHWOLD; T/W E332030 EXCEPT THE EASEMENT THEREIN  
(SECONDLY & THIRDLY & FOURTHLY DESCRIBED); SOUTHWOLD

PIN 35323-0141 (LT)

PART OF LOT 11 CON 1 BAYHAM DESIGNATED AS PART 3, 11R5136; BAYHAM



**SCHEDULE B-2**

PIN 50256-0253 (LT)

PT LT 18 CON 2 WOODHOUSE PT 1, 37R3413; NORFOLK COUNTY

SCHEDULE B-3

PIN 75097-0449 (LT)

PT LT 243 CON NTR MERSEA (LEAMINGTON) PT 1 & 2, 12R15539; LEAMINGTON; SUBJECT TO AN EASEMENT IN GROSS OVER PART 3 PL 12R24008 UNTIL 2020/05/28 AS IN CE425872

PIN 75119-1094 (LT)

PT LT 12 CON 1 MERSEA, DESIGNATED AS PTS 1, 2, 3 & 4 PL 12R26031; SUBJECT TO AN EASEMENT IN GROSS OVER PTS 2 & 3 PL 12R26031 AS IN R1331689; MUNICIPALITY OF LEAMINGTON

SCHEDULE B-4

PIN 38124-0159 (R)

PT SHERBROOKE MARSH SHERBROOKE; PT RDAL BTN CON 2 AND CON 3 SHERBROOKE (CLOSED BY UNREGISTERED BYLAW #3); PT LT A PL 776; PT WATER LT IN FRONT OF LT A PL 776 PT 3 & 5 18R3978 AND PT 1 18R4368; T/W HC219461; HALDIMAND COUNTY

PIN 38126-0072 (LT)

PT LT 16 CON 2 SHERBROOKE PT 1-2 18R1610 & PT 1 18R4958 EXCEPT PT 1 18R4513; HALDIMAND COUNTY

SCHEDULE B-5

PIN 64243-0080 (LT)

PT LT 7 CON 8 NIAGARA RIVER BERTIE AS IN RO667569; FORT ERIE

**SCHEDULE B-6**

**PIN 00834-0004 (LT)**

PT LT 13, CON 3 (ROMNEY), PART 1, 24R4082 S/T 470227, TOGETHER WITH EASEMENT OVER PART LOT 13, CON. 3, ROMNEY DESIGNATED AS PART 1, 24R8264 AS IN CK32201; CHATHAM-KENT

**PIN 00852-0041 (LT)**

PT LTS 179 & 180, CON TALBOT RD SURVEY, & PT OF THE RD ALLOWANCE BTN LTS 179 & 180 CLOSED BY BY-LAW 79123, PTS 1, 2 & 3, 24R5141 EXCEPT ALL MINERAL RIGHTS, MINES & MINERALS WHETHER SOLID, LIQUID OR GASEOUS ALREADY FOUND OR WHICH MAY BE FOUND TO EXIST WITHIN, UPON OR UNDER PT 3, 24R5141 S/T RO12117 & RO11448; S/T INTEREST, IF ANY, IN 79124; ROMNEY

**PIN 00852-0042 (LT)**

PT LT 179, CON TALBOT RD SURVEY, DESIGNATED AS PART 1, 24R 5465 S/T 84979; ROMNEY

**PIN 00852-0044 (LT)**

PT LT 179, CON TALBOT RD SURVEY , PART 6 , 24R5141 , EXCEPT ALL MINERAL RIGHTS, MINES & MINERALS WHETHER SOLID, LIQUID OR GASEOUS ALREADY FOUND OR WHICH MAY BE FOUND TO EXIST WITHIN, UPON OR UNDER PT 6, 24R5141 S/T RO12117 ; ROMNEY ; DESCRIPTION AMENDED 1997/03/19 BY R. PINSONNEAULT

**PIN 00678-0047 (LT)**

PT LT 96 CON BROKEN FRONT HOWARD PT 1 & 2 24R1236; S/T 75015 PARTIALLY SURRENDERED BY 260870; CHATHAM-KENT

**SCHEDULE C-1 – Claims to be deleted and expunged from title to the Elgin Real Property**

**PIN 35151-0124 (LT)**

1. Charge in favour of National Bank of Canada (“NBC”) securing the principal amount of \$150,000,000.00 registered as Instrument No. CT58564 on June 30, 2010.

**PIN 35323-0141 (LT)**

1. Charge in favour of NBC securing the principal amount of \$150,000,000.00 registered as Instrument No. CT58566 on June 30, 2010.

**SCHEDULE C-2 – Claims to be deleted and expunged from title to the Norfolk Real Property**

**PIN 50256-0253 (LT)**

1. Charge in favour of NBC securing the principal amount of \$150,000,000.00 registered as Instrument No. NK35252 on June 30, 2010.

**SCHEDULE C-3 – Claims to be deleted and expunged from title to the Essex Real Property**

**PIN 75097-0449 (LT)**

1. Charge in favour of NBC securing the principal amount of \$150,000,000.00 registered as Instrument No. CE430703 on June 30, 2010.

**PIN 75119-1094 (LT)**

1. Notice of Charge of Lease in favour of NBC securing the principal amount of \$150,000,000.00 registered as Instrument No. CE442705 on September 27, 2010; and
2. Notice of Charge of Lease in favour of NBC securing the principal amount of \$150,000,000.00 registered as Instrument No. CE443071 on September 29, 2010.



**SCHEDULE C-4 – Claims to be deleted and expunged from title to the Haldimand Real Property**

**PIN 38124-0159 (R)**

1. Charge in favour of NBC securing the principal amount of \$150,000,000.00 registered as Instrument No. HC304542 on June 30, 2010.

**PIN 38126-0072 (LT)**

1. Charge in favour of NBC securing the principal amount of \$150,000,000.00 registered as Instrument No. CH25140 on June 30, 2010.

**SCHEDULE C-5 – Claims to be deleted and expunged from title to the Niagara Real Property**

**PIN 64243-0080 (LT)**

1. Charge in favour of NBC securing the principal amount of \$150,000,000.00 registered as Instrument No. SN285496 on June 30, 2010.

**SCHEDULE C-6 – Claims to be deleted and expunged from title to the Chatham-Kent Real Property**

**PIN 00834-0004 (LT)**

1. Charge in favour of NBC securing the principal amount of \$150,000,000.00 registered as Instrument No. CK46854 on June 30, 2010; and
2. Notice of Charge of Lease in favour of NBC securing the principal amount of \$150,000,000.00 registered as Instrument No. CK50969 on November 4, 2010.

**PIN 00852-0041 (LT)**

1. Charge in favour of NBC securing the principal amount of \$150,000,000.00 registered as Instrument No. CK46852 on June 30, 2010.

**PIN 00852-0042 (LT)**

1. Charge in favour of NBC securing the principal amount of \$150,000,000.00 registered as Instrument No. CK46852 on June 30, 2010.

**PIN 00852-0044 (LT)**

1. Charge in favour of NBC securing the principal amount of \$150,000,000.00 registered as Instrument No. CK46852 on June 30, 2010.

**PIN 00678-0047 (LT)**

1. Charge in favour of NBC securing the principal amount of \$150,000,000.00 registered as Instrument No. R669693 on June 30, 2010.

**SCHEDULE D – Permitted Encumbrances, Easements and Restrictive Covenants related to the Real Property described in Schedules “B-1” to “B-6”, inclusive (collectively, the “Real Property”)**

**(unaffected by the Vesting Order)**

Permitted Encumbrances with respect to the Real Property means:

- (a) All of the Permitted Encumbrances affecting the Real Property set out in the Sale Agreement to the extent not otherwise set out herein;
- (b) All of the instruments set out in this Schedule “D”;
- (c) the exceptions and qualifications set out in the *Land Titles Act* (Ontario) and the *Registry Act* (Ontario), as applicable to each portion of the Real Property, as well as any other exceptions and/or qualifications set out on any of the parcel registers for the Real Property, as well as all instruments registered on title to the Real Property or any portion thereof, save and except for those instruments that are set out in Schedules “C-1” to “C-6” hereto;
- (d) The reservations, limitations, provisos and conditions expressed in any grants or transfers from the Crown and statutory exceptions to title;
- (e) Any registered or unregistered easements, servitudes, rights-of-way, licences, restrictions that run with the land and other encumbrances and/or agreements with respect thereto (including, without limiting the generality of the foregoing, easements, rights-of-way and agreements for sewers, drains, gas and water mains or electric light and power or telephone, telecommunications or cable conduits, poles, wires and cables);
- (f) Inchoate liens for taxes, assessments, public utility charges, governmental charges or levies not at the time due;
- (g) Any encroachments, minor defects or irregularities indicated on any survey of the Real Property or any portion thereof or which may be disclosed on an up-to-date survey of the Real Property or any portion thereof;
- (h) Zoning (including, without limitation, airport zoning regulations), use and building by-laws and ordinances, federal, provincial or municipal by-laws and regulations, work orders, deficiency notices and any other noncompliance;
- (i) Any breaches of any applicable laws, including, without limitation, outstanding building permits, work orders and deficiency notices;
- (j) Any subdivision agreements, site plan agreements, development agreements and any other agreements with the municipality, region, publicly regulated utilities or other governmental authorities having jurisdiction;
- (k) agreements and/or plans relating to pooling or unitization of any portion of the Real Property or the Debtors’ interest therein; and
- (l) Defects or irregularities in title to the Property.

Without in way limiting the generality of the foregoing, the Permitted Encumbrances shall include the following specific instruments registered against the title to the Real Property or any portion thereof:

**A. THE ELGIN REAL PROPERTY**

**PIN 35151-0124 (LT)**

None

**PIN 35323-0141 (LT)**

1. Notice registered on July 16, 2013 as Instrument No. CT95079 by Dundee Oil and Gas Limited (“Dundee”).

**B. THE NORFOLK REAL PROPERTY**

**PIN 50256-0253 (LT)**

1. Notice of Claim registered on March 29, 2000 as Instrument No. NR545686 by Glenerd Limited with respect to various gas leases.

**C. THE ESSEX REAL PROPERTY**

**PIN 75097-0449 (LT)**

1. By-law registered on April 1, 1970 as Instrument No. R465228;
2. Pooling Agreement registered on July 26, 1996 as Instrument No. R1352002 between The Lake Erie and Detroit River Railway Company (“Railway”) and Pembina Exploration Limited (“Pembina”) with respect to drilling arrangements pursuant to an oil and gas lease;
3. Unitization Agreement registered on July 26, 1996 as Instrument No. R1352003 between Railway and Pembina with respect to drilling arrangements pursuant to an oil and gas lease;
4. Application to Annex Restrictive Covenants registered on September 24, 1996 as Instrument No. R1358630Z and containing restrictions relating to fencing and drainage;
5. Notice of Determination/Surrender of Lease registered on March 30, 2004 by Talisman Energy Inc. (“Talisman”);
6. Application to Amend Based on Court Order registered on May 26, 2010 as Instrument No. CE425218 amending the legal owner to Talisman; and
7. Transfer of Easement registered on May 28, 2010 as Instrument No. CE425872 in favour of Cogeco Cable Canada GP Inc.

**PIN 75119-1094 (LT)**

1. By-law registered on August 27, 1963 as Instrument No. R286958;
2. Agreement to Lease registered on October 5, 1982 as Instrument No. R864005;
3. Order of the Ontario Energy Board registered on March 9, 1994 as Instrument No. R1265517;
4. Assignment General registered on October 18, 1994 as Instrument No. R1289597;
5. Easement Agreement registered on January 4, 1996 as Instrument No. R1331689;
6. Agreement registered on April 4, 2000 as Instrument No. 1488244 among Paul Miehle and Rose Miehle and The Municipality of Leamington;
7. Declaration registered on January 15, 2001 as Instrument No. R1506492;
8. Notice of an Agreement registered on December 9, 2004 as Instrument No. CE120335 among Paul Miehle, Rose Miehle, Thomas Miehle and Talisman;
9. Notice of an Agreement registered on December 9, 2004 as Instrument No. CE120335 among Paul Miehle, Rose Miehle, Thomas Miehle and Talisman;
10. Notice of Assignment of Lessee Interest registered on July 15, 2010 as Instrument No. CE432738 between Talisman and Dundee;
11. Notice of Agreement registered on July 15, 2010 as Instrument No. CE432785 between Talisman and Dundee;
12. Notice registered on April 2, 2015 as Instrument No. CE653021 among John Miehle, Thomas Miehle and Dundee; and
13. Notice registered on April 10, 2015 as Instrument No. CE653716 among John Miehle, Thomas Miehle and The Corporation of the Municipality of Leamington.

**D. THE HALDIMAND REAL PROPERTY**

**PIN 38124-0159 (R)**

None

**PIN 38126-0072 (LT)**

1. Notice of Lease registered on May 9, 1996 as Instrument No. HC227035 in favour of The Consumers' Gas Company Ltd. ("Consumers"); and

2. Notice of Lease registered on March 7, 2016 as Instrument No. CH65335 in favour of Enbridge Gas Distribution Inc.

**E. THE NIAGARA REAL PROPERTY**

**PIN 64243-0080 (LT)**

1. By-law registered on July 31, 1969 as Instrument No. RO106181 designating areas of subdivision control.

**F. THE CHATHAM-KENT REAL PROPERTY**

**PIN 00834-0004 (LT)**

1. Agreement of Lease registered on August 31, 1978 as Instrument No. 334572 between Robert Kenneth Renwick and Mabel Elizabeth Renwick (collectively, the "**Renwicks**"), as Lessor, and Anshutz (Canada) Exploration Ltd., as Lessee, being a petroleum and natural gas lease (the "**Oil and Gas Lease**");
2. Assignment of the Oil and Gas Lease registered on December 31, 1987 as Instrument No. 454241 between Pembina and Consumers;
3. Transfer/Deed of Land registered on January 20, 1989 as Instrument No. 470227 from the Renwicks to Consumers and containing a reservation in favour of the Renwicks, their heirs, executors, administrators and assigns all petroleum, natural gas and related hydrocarbons and all minerals, substances and other gases within, upon or under the lands;
4. Notice of Assignment of Leases registered on October 31, 1994 as Instrument No. LT4321 between Consumers and Pembina;
5. Notice registered on October 1, 2002 as Instrument No. LT39326 between the Renwicks and Talisman relating to Instrument Nos. 334572, 45421 and LT4321 described in items 1, 2 and 4 above; and
6. Notice of Assignment of Lessee Interest registered on October 28, 2010 as Instrument No. CK49588 from Talisman to Dundee and relating to Instrument No. 334572

**PIN 00852-0041 (LT)**

1. Indenture registered on July 8, 1954 as Instrument No. RO12117 between Union Gas Company of Canada, Limited ("**Union Gas**"), as Grantor, and Consolidated West Petroleum Ltd. ("**Consolidated West**"), as Grantee, pursuant to which Union Gas reserved all mining rights, mines and minerals, whether solid, liquid or gaseous already found or which may be found to exist within, upon or under the lands with full liberty of ingress, egress and regress in, to and upon the lands for operations thereon relating to such mines and minerals;

2. Deed of Land registered on an indeterminate date as Instrument No. RO11448 from Union Gas to an illegible grantee pursuant to which Union Gas reserved similar rights to those set out in Instrument No. RO12117 and described in item 1 above;
3. Deed of Land registered on April 26, 1956 as Instrument No. 79124 from The Corporation of the Township of Romney to Consolidated West, which deed is stipulated to be subject to any presently existing drains or drainage rights affecting the lands;
4. Notice of Claim registered on May 16, 1991 as Instrument No. 502724 by Union Gas Limited ("UGL") in connection with a Right-of-Way Agreement from 1908;
5. Assignment of Lease registered on April 30, 1992 as Instrument No. 516030 between UGL and Lakeville Holdings Inc. ("Lakeville") with respect to an assignment of various oil and gas leases; and
6. Application to Change Name – Instrument registered on May 13, 2011 as Instrument No. CK57497 changing the name of Lakeville to Lagasco Inc. ("Lagasco").

**PIN 00852-0042 (LT)**

1. Transfer of Easement registered on January 7, 1957 as Instrument No. 84979 in favour of Consolidated West;
2. Notice of Claim registered on May 16, 1991 as Instrument No. 502724 by UGL in connection with a Right-of-Way Agreement from 1908;
3. Assignment of Lease registered on April 30, 1992 as Instrument No. 516030 between UGL and Lakeville with respect to an assignment of various oil and gas leases; and
4. Application to Change Name – Instrument registered on May 13, 2011 as Instrument No. CK57497 changing the name of Lakeville to Lagasco.

**PIN 00852-0044 (LT)**

1. Indenture registered on July 8, 1954 as Instrument No. RO12117 between Union Gas, as Grantor, and Consolidated West, as Grantee, pursuant to which Union Gas reserved all mining rights, mines and minerals, whether solid, liquid or gaseous already found or which may be found to exist within, upon or under the lands with full liberty of ingress, egress and regress in, to and upon the lands for operations thereon relating to such mines and minerals;
2. Notice of Claim registered on May 16, 1991 as Instrument No. 502724 by UGL in connection with a Right-of-Way Agreement from 1908;
3. Assignment of Lease registered on April 30, 1992 as Instrument No. 516030 between UGL and Lakeville with respect to an assignment of various oil and gas leases; and
4. Application to Change Name – Instrument registered on May 13, 2011 as Instrument No. CK57497 changing the name of Lakeville to Lagasco.

**PIN 00678-0047 (LT)**



1. Right of Way Agreement registered on October 25, 1955 as Instrument No. 75015 in favour of Union Gas Co. of Canada Ltd. with respect to gas pipelines;
2. Agreement of Lease registered on November 26, 1970 as Instrument No. 221429 in favour of Leonard A. Pegg relating to natural gas production and wells ;
3. Surrender of Lease registered on September 18, 1973 as Instrument No. 260870 wherein Union Gas Ltd. partially surrenders the right of way in Instrument No. 75015 described in item 1 above;
4. Agreement registered on February 4, 1974 as Instrument No. 266197 between Union Gas Ltd. and Leonard A. Pegg relating to Instrument Nos. 75015 and 260870 described in items 1 and 3 above, respectively;
5. Assignment of Lease registered on December 19, 2002 as Instrument No. 621289 between The Estate of Leonard Arthur Pegg, Charles W. Pegg and Eriebrook Energy Ltd. relating to various oil and gas leases that are no longer registered against the title; and
6. Notice of Claim registered on December 19, 2002 as Instrument No. 621290 in favour of Eriebrook Energy Ltd. and relating to Instrument No. 221429 described in item 2 above.

**SCHEDULE E**

**Assumed Contracts under the Sale Agreement**

<b>Vendor/Customer</b>	<b>Contract Name</b>	<b>Contract Type</b>
American Refining Group, Inc.	American Refining Group - Crude Oil Purchase/Sale Agreement	Marketing
American Refining Group, Inc.	Marketing Agreement-2nd Amendment-377082 American Refining Group 31-01 2017	Marketing
American Refining Group, Inc.	3rd Amendment to Dundee-ARG Executed Agreement April 1 2017	Marketing
Enbridge Gas Distribution Inc.	Enbridge Gas Distribution Inc. Gas Exchange Agreement	Marketing
Enerflex	Enerflex Equipment Rental	Vendor
Quest Automotive Leasing Services	Master Lease Agreement	Vendor
Shell Chemicals Canada	NGL Shell Canada-Shell Chemicals 01-Apr-2013	Marketing
Shell Chemicals Canada	Shell Canada Energy - N.G.L Purchase Contract	Marketing
Union Gas Ltd.	Union Gas-Ontario Production Gas Purchase Agreement	Marketing
Union Gas Ltd.	Marketing Agreement-377045 Union Gas - M13 Transportation & Producer 25-Jun-2013	Vendor
Williamson Leasing (now Pattison)	Master Lease Agreement	Vendor

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 DUNDEE OIL AND GAS LIMITED

Court File No.: CV-18-591908-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

Proceedings commenced at Toronto

APPROVAL AND VESTING ORDER

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Lawyers for the Applicant

## **APPENDIX “D”**

**CITATION:** Dundee Oil and Gas Limited (Re), 2018 ONSC 6376  
**COURT FILE NO.:** CV-18-591908-00CL  
**DATE:** 20181024

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

**RE:** 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 DUNDEE OIL AND GAS LIMITED, (Applicant)

**BEFORE:** S.F. Dunphy J.

**COUNSEL:** *Grant Moffat and Rachel Bengino, for the Monitor*

*Aubrey Kauffman for National Bank of Canada*

*Richard Swan for Lagasco Inc.*

*Adam Mortimer for MNR*

*Victoria Yang for MacLeod Energy*

*Matthew Gottlieb and Andrew Winton for Canadian Overseas Petroleum  
Limited*

**HEARD at Toronto:** October 24, 2018

**REASONS FOR DECISION**

[1] The Monitor has come before me asking for the court's advice and directions in relation to a further proposed extension of the closing date for an Asset Purchase Agreement previously approved by the court. This is not the first extension and the ground beneath this transaction has moved sufficiently far since my original approval of it that the Monitor thought it advisable to seek my advice and directions before moving forward any further with it. The Monitor has also discovered what appear to be various serious and material breaches of the confidentiality obligations of the purchaser under the APA for which the court's direction is also sought.

[2] In the circumstances of this case, I have been persuaded that a further three-week extension (to November 16, 2018) is justified and am authorizing the Monitor to proceed to agree to an extension providing it is satisfied as to the precise terms proposed and that such terms are reasonably in line with the proposal described to me in court (and referred to below).

### **Background Facts**

[3] These proceedings began as a Notice of Intention to Make a Proposal of Dundee Oil and Gas Limited pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3. On February 13, 2018, I approved an application to continue the proposal proceedings under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36.

[4] On April 4, 2018, Dundee entered into an Asset Purchase Agreement with Lagasco Inc. as buyer. The APA came before me for approval on June 11, 2018. I approved the proposed transaction at that time and granted a number of requested vesting orders.

[5] Among other items of relief sought and granted at that time was an order pursuant to s. 11.3 of the CCAA assigning certain executory contracts. Prior to agreeing to that requested order, I had required the purchaser (Lagasco) to provide further evidence of its fitness as a proposed assignee. I also received information from the Monitor regarding a cash flow modelling exercise that had been performed on the proposed purchaser.

[6] This evidence was placed before me for two purposes. First, I needed to be satisfied that the purchaser would be a fit and proper assignee (and the evidence initially supplied to me suggested that the purchaser might have a high degree of leverage post-closing). Second, the Ministry of Natural Resources and Forestry would be required to consent to the transfer of Dundee's well licences under the APA and had a similar concern regarding the proposed assignee from the perspective of ensuring that capping and de-commissioning obligations related to exhausted wells would be attended to. MNRF has an obvious concern that operators not be permitted to extract all of the revenue from a well while leaving the de-commissioning costs of exhausted wells to be funded by the general public.

[7] The APA contemplated an outside date for closing of July 30, 2018 – only six weeks following court approval. It also contemplated that extensions to the outside closing date required the agreement of National Bank of Canada and the Monitor. I was advised in July that an initial extension of the closing date from July 30, 2018 to August 31, 2018 was required in order to provide time for the MNRF to complete its review and approval process.

[8] It was then the first material obstacle to closing emerged. Although not part of its initial financing plans, Lagasco reached an agreement with MacLeod Energy Limited to purchase some of the assets to be purchased by Lagasco at closing. It turned out that MacLeod (or an affiliate) was bound by an agreement with Canadian Overseas Petroleum Limited, itself an unsuccessful bidder for the Dundee assets to be purchased by Lagasco (and MacLeod). COPL learned of MacLeod's role and sought an injunction blocking MacLeod from purchasing any of the Dundee assets.

[9] The evolution of Lagasco's business plans had caused some delay in closing at all events because the monitor and MNRF now needed to re-evaluate the prior cash flow models to assess the future stability of two potential buyers instead of one. As the review

process continued in tandem with the scheduling of the injunction hearing, the parties agreed to a number of short-term extensions to the outside closing date – from August 31, 2018 until October 12, 2018. It emerged during this process that, while Lagasco had no financing condition in its favour in the APA and had represented that its financing was in place, it was no longer clear that Lagasco would be in a financial position to close absent the expected funds from the MacLeod sale. Some of the short extensions in September were directed at firming up alternative financing.

[10] On September 28, 2018, the second unexpected obstacle to closing exploded. Lagasco was dependent upon a commitment from PACE Savings and Credit Union Limited for the lion's share of its financing. The Monitor and National had both sought and obtained firm confirmations from PACE that its financing was in place when consenting to the closing extensions that were granted in late September. On September 28, 2018, PACE was placed in Administration by the Deposit Insurance Corporation of Ontario for reasons having no connection to the Dundee transaction.

[11] At first it appeared that PACE might nevertheless be prepared to honour its funding commitment notwithstanding the administration proceedings. On October 10, 2018, a Third Amending Agreement was reached whereby consent to a further extension of the outside date for closing from October 12, 2018 to October 26, 2018 was granted. To secure the consent of the Seller, Lagasco agreed to pay a non-refundable extension fee of \$300,000 as well as a non-refundable professional cost fee of \$150,000.

[12] Lagasco tried and failed to secure the consent of the administrator to the completion of the committed PACE financing. The reasons for that failure are not material – I am fully satisfied that Lagasco tried and that it reasonably believed that its efforts were not doomed to failure. However, that door is now closed.

[13] Patience of stakeholders on the seller's side has understandably worn thin. Including the Third Amending Agreement, a total of five extensions have been granted to the outside closing date. It is now clear that the transaction will not be able to close by October 26<sup>th</sup> either. PACE will not provide the needed funding.

[14] Lagasco has not thrown in the towel. It has secured a Term Sheet from a lender whom the Monitor acknowledges to be serious and credible. The Term Sheet appears to the Monitor to be credible as well. Lagasco has secured the agreement of PACE to allow its counsel to work for the new proposed lender, thereby shortening the learning curve and thus the time needed to close any financing to be provided under the Term Sheet. The proposed lender is bringing the Term Sheet to its credit committee in the morning of October 26<sup>th</sup> and is hopeful that the Term Sheet will secure the necessary approval to evolve into a full Commitment at that time.

[15] If these problems were not enough, a third bombshell emerged in the past few days. The Monitor has learned that Lagasco and its financial advisor have both established data rooms to enable potential investors in and lenders to Lagasco to assess the Dundee assets. Lagasco's reasons for doing so are clear enough – it is in need of

investors or lenders or both. It has had to scramble to deal with the consequences of the loss of the MacLeod transaction and then the PACE financing. However, Lagasco did not seek the Monitor's approval to take these steps, the parties who have accessed the data rooms have not been screened or approved by the Monitor and it seems clear that at least one party has received confidential information without agreeing to any confidentiality agreement at all, let alone one approved by the Monitor. The Monitor is of the view that there were agreements in place to prohibit all of this.

[16] Lagasco points out that these revelations have come about through the interventions of COPL, a party who it characterizes as a "bitter bidder" without standing who has nevertheless pulled out all of the stops to undermine the APA and prevent Lagasco from purchasing the Dundee assets.

[17] Lagasco's objections are beside the point. COPL may well be a bitter bidder, its standing may be dubious and it may have an obvious self-interest in having a second opportunity to acquire the Dundee assets, at an advantageous price if possible. None of this excuses breaches of solemn confidentiality obligations by Lagasco. The motives of the whistleblower are not the issue here.

[18] Before leaving the topic of COPL, I will make these observations. I see no utility or basis to cast aspersions upon COPL. While they may have had only a thin case for standing, and what standing they have had has been on sufferance, they have been resolutely straightforward in expressing and defending their interest. COPL's intervention may have sunk the MacLeod transaction, but Lagasco's APA was never contingent on that transaction and it was not even initiated until *after* court approval of the APA was granted. The Monitor has also satisfied itself that COPL did not cause the leak of confidential information that came to the Monitor's attention.

[19] If Lagasco has had its share of troubles, it cannot blame COPL for acting in its own self-interest where COPL has done so honestly and without underhanded dealings.

[20] The Monitor has outlined the evidence it has assembled of breaches of confidentiality obligations in its Sixth Report. The investigation is not complete and there are open questions. Some preliminary conclusions do emerge:

- a. Lagasco appears to have been of the view that it was within its rights to do what it did – I have not heard argument on the point nor have I yet seen the underlying confidentiality and non-disclosure agreements that would need to be examined and thus am reaching no conclusion as to the merits of the claim one way or the other;
- b. Lagasco has been fully co-operating with the Monitor to identify exactly what information went to whom and to contain the problem as fully as can be done;



- c. Lagasco has been able to contact all but one of the parties who received such information.

[21] While the Monitor has been able to be satisfied that the genie is *mostly* back in the bottle, it is also clear that at least some information has gone to a party subject to no NDA and managed to make its way into the hands of COPL (who did not themselves procure anyone's breach of obligation). When confidential information from even one recipient makes its way into the public domain, the genie will be fully out of the bottle regardless of how much co-operation has been shown by all of the other recipients. We may not be there yet, but it seems we are perilously close to that point.

[22] In short, there appear to be potentially serious breaches of solemn confidentiality obligations. These breaches could have serious consequences to any future efforts of the Monitor to market the Dundee assets should the APA fail to close. The ability of the Monitor to control access to confidential information and to manage a process designed to maximize value may be seriously impaired. There is at least some evidence that Lagasco's actions might be characterized as an intentional breach of those confidentiality obligations regardless of what position Lagasco takes.

[23] I express all of these conclusions regarding breaches of confidentiality obligations with the utmost care because matters are only at a preliminary stage. However, CCAA cases evolve in real time and it is in real time that I must determine what directions to give. The Monitor must decide whether to extend the time for completing an APA where the Monitor has concluded that the purchaser has engaged in what appears to the Monitor to be significant and grave breaches of confidentiality obligations that may have far-reaching implications. The integrity of the entire sales process must be examined in light of this information.

### **Issues**

[24] There are two related issues to be considered. Firstly and most immediately, I must consider whether the APA has passed the point of no-return or whether the Monitor ought to be advised by me to consent to a further extension of time. Secondly, I must consider what steps if any ought to be taken in light of the information contained in the Monitor's Sixth Report regarding breaches of confidentiality obligations.

### **Discussion and analysis**

#### **(a) Extension of the APA**

##### **(i) *Position of the parties***

[25] National Bank of Canada is by no means the only party with an economic interest in the APA, but it clearly has a very significant interest. National's secured loans will not be repaid in full should the transaction close. It will suffer a significant shortfall.

[26] National has reached two conclusions. First, it has negotiated a three-week extension (until November 16, 2018) on terms that include a payment of an extension fee to compensate the estate for some of the extensive costs that have been incurred by reason of the various extensions that have been required to date as well as the costs required to deal with the potential changes to the deal structure. The fee will be \$300,000 per week of the extension in addition to an agreement to help defray additional professional fees over the same time frame (\$75,000 per week). Second, National has now clearly drawn the proverbial line in the sand beyond which it is not prepared to go. If there is to be an extension, this is the last chance for this deal to be closed. If it does not close, National supports starting a new process and moving on. It will not consent to a further extension.

[27] There are other significant economic stakeholders who have a vital interest both in a closing and in the viability and stability of the purchaser going forward. These include landowners who have granted drilling and extraction rights, employees, the MNRF in respect of potential future liabilities for capping and those of Dundee's employees who would be kept on by the purchaser.

[28] The MNRF has played an active role in negotiations aimed at closing the APA and supports the extension proposal negotiated by National Bank. The other "going-forward" stakeholders have not been engaged to the same degree as MNRF and have not retained counsel or taken a formal position on the motion. I am however satisfied that their interests are reasonably aligned with MNRF's interest and thus attach significant weight to MNRF's position.

[29] Dundee at this stage is playing a somewhat passive role. It will not emerge intact from this transaction – its assets will all be sold and it will continue to have significant unpaid debt. It is trying to minimize the harm to its stakeholders and has indicated a willingness to abide by whatever directions the court provides.

[30] Finally I turn to Lagasco's submissions. Lagasco initially filed its own Notice of Motion seeking a mandatory extension of the closing date under the APA for its benefit as purchaser. That motion – which should have faced very considerable obstacles in terms of standing and jurisdiction had it proceeded – became moot by reason of the understanding reached with National shortly before the hearing. It was not proceeded with. Lagasco obviously supports me advising the Monitor to agree to a further extension on the terms of the agreement it has negotiated with National.

[31] Lagasco asks me to consider the following factors:

- a. Lagasco has been acting in good faith. The delays that have occurred were both unexpected and unwanted. Lagasco had expected to have access to asset sales to fund its acquisition and did not count on the MacLeod transaction being effectively stymied by COPL's injunction application. Similarly, Lagasco did not anticipate that its principal lender, PACE, would be placed into administration on September 28, 2018 thereby knocking the

legs out from underneath its financing. While none of these problems are the seller's responsibility under the APA, these have been serious and unanticipated blows to Lagasco who has had to scramble on relatively short notice to cobble together alternatives.

- b. Lagasco has invested a lot in the APA and is very heavily incented to see it to a successful closing. In addition to the devotion of a very considerable amount of time and energy to moving this transaction towards closing, Lagasco has paid a very significant deposit (10% of the cash purchase price), has paid a \$300,000 extension fee already and is proposing to commit to paying more than a million dollars in further fees and expenses towards the transaction. These committed amounts are all before considering the professional fees incurred by Lagasco in bringing the transaction along this far. Lagasco's principals have been required to provide personal guarantees as well. Lagasco and its principals are heavily committed.
- c. Lagasco has secured credible alternative financing, which financing is being submitted for credit committee approval on October 26, 2018. Lagasco has also secured the permission of PACE Credit Union to permit its former counsel to represent the proposed replacement lender – assuming approval of the credit is received – which will shorten the time needed to proceed from credit approval to closing.

(ii) *Position of the Monitor*

[32] The Monitor clearly plays an especially important role in cases such as this. The Monitor is always the eyes and ears of the court, but never more so than where some of the natural checks and balances of a multi-party restructuring transaction begin to wear down or lose their effectiveness.

[33] This is a liquidating CCAA. The debtor will not emerge and unsecured creditors with no on-going dealings with the purchased business will not receive anything. Creditors and stakeholders with an interest in the continuing business are numerous but diffuse – none have played a continuing and active role in this case, each of their interests being individually small relative to the costs of on-going participation and engagement.

[34] In cases such as this, the day to day supervisory and advisory role played by the Monitor acquires a particularly high level of importance and our courts rightly place a great deal of reliance and faith in the skill and integrity that our Monitors bring to the process.

[35] The Monitor has frankly and ably placed before me a host of concerns that are serious ones. I shall deal with the issue of the breaches of confidentiality undertakings below. Apart from that issue, the transaction is one that has morphed fairly significantly from the time of initial approval by me. These may be conveniently considered under the headings of timing, conditionality and structure.

### Timing

[36] The APA is dated as of April 4, 2018 and was approved by me on June 11, 2018. It contemplated an outside closing date of July 30, 2018. The proposal negotiated by National and agreed to by Lagasco would see the outside closing date moved to November 16, 2018. The extent of the resulting delay in closing – regardless of the reasons for each such delay – is a prejudice in and of itself. Apart from the time value of money and the prejudice creditors suffer from further delay in receiving payment on their claims, this delay subjects the debtor's business to additional running costs and risk and inevitably entails the incurring of very significant costs relative to the continued operation of a debtor company in CCAA proceedings and the professional and other costs incurred in moving towards closing. Some of these costs – and indeed a very significant portion of these costs – would be offset by the extension fee already paid and the extension fees proposed to be paid pursuant to the tentative arrangement negotiated by National.

### Conditionality

[37] Conditionality is another area of concern. Among the major selling points of the transaction as approved by me on June 11, 2018 was its unconditional nature. The buyer agreed to a substantial deposit and imposed relatively few conditions of closing. In particular, there was no financing condition. I cannot now speculate as to how attractive the Lagasco APA would have appeared in April 2018 had an accurate picture of the fragility of the buyer's financing been fully appreciated.

### Structure

[38] The initial motion to approve the APA was deferred until June 11, 2018 in order to provide the parties with a further opportunity to satisfy me with appropriate evidence that the buyer was a fit and proper assignee of the executory contracts I was being asked to approve the assignment of pursuant to s. 11.3 of the CCAA. Lagasco as purchaser had provided evidence of the stability of the emerging business that enabled me to acquire a sufficient degree of comfort to exercise my discretion under s. 11.3 of the CCAA and approve the assignment of executory contracts. One of the factors in that approval was a cash flow forecast that considered the ability of the post-closing purchaser to service debt while meeting its rent and environmental responsibilities in relation to safe shut-down of exhausted wells. Lagasco's plans have been evolving since June 2018, largely in response to the various unexpected problems it has faced in its internal financing – problems that are not and never have been the responsibility of Dundee as vendor. The current plan is for a division of the business into two parts – one part holding off-shore wells and one part holding on-shore wells. The cash flow forecasts that underpinned my approval – and will be needed to secure the monitor's and MNRF approval – will need to be re-worked to reflect these changes and re-assessed to see whether there is a material difference that requires re-visiting.

[39] The Monitor is concerned – and rightly so – that the cumulative effect of these is to cast a shadow upon the integrity of the process it has run under my supervision and

the impact of the proposed extension on the integrity of the process ought to be an important consideration. While the Monitor has expressed these concerns, the Monitor has not reached the point where it is prepared to recommend that the APA be allowed to expire in accordance with its terms. Objectively, the Monitor views the transaction as being a valuable one. However, the Monitor was of the view that the integrity of the process concerns have acquired sufficient weight to warrant fresh consideration.

(iii) *My conclusions*

[40] While this case is not *Royal Bank of Canada v. Soundair Corp.*, 1991 CanLII 2727 (ON CA), I consider the *Soundair* principles are a good guideline to consider in cases where significant challenges have arisen to the integrity of the process. The interests of all of the parties – including that of the creditors in receiving the highest price – is by no means the only consideration to be weighed. The efficacy and integrity of the process and any unfairness in the working out of the process must also be considered. No one criterion is necessarily paramount.

[41] I consider the following factors material to my decision:

- a. I have no basis at this point to conclude that a new process would likely deliver a higher or better price for the benefit of stakeholders. The efforts of the Monitor and the process to secure the highest and best offer have not been called into question by subsequent events. If this transaction is able to be nursed to the finish line, bandages and all, there is every reason to expect that it remains the best economic outcome viewed from the perspective of existing creditors and is a good outcome viewed from the perspective of on-going creditors.
- b. The economic interests of the parties is not disregarded in the *Soundair* analysis and I do not disregard it here. The very significant losses suffered by creditors with the most at stake entitles them to a very sympathetic and attentive hearing. National's recommendation is a reasoned one and comes from the perspective of a frank acknowledgement of the possibility that it may have to take its lumps and start the process all over again. The MNRF also remains engaged in the transaction and its concern for the potential future capping and abandonment costs is a good proxy for the concerns of stakeholders with an on-going interest in the business.
- c. The efficacy and integrity of the process is of course a matter of great concern here. The courts must always be vigilant to weed out parties who would abuse a court-supervised sales process to attempt a "bait and switch": promising high and delivering low when competition has packed its bags and gone home. Had I the sense that the purchaser has been manipulating the process with a view to seeking its own advantage, my approach might be quite different. The purchaser has not sought to lever uncertainty into a lower price. It is at least fair to observe that the purchaser

cannot be said to have deliberately provoked either the loss of the MacLeod transaction or the failure of the PACE financing. The purchaser has been dealing with adversity that it did not plan for and it has not sought to shirk its responsibility for dealing with it. The purchaser has made a very large investment in this transaction that it stands to lose should it fail to close. All of these factors persuade me that this purchaser has not set out to abuse the court's process or otherwise undermine the integrity of the sales process undertaken with the court's supervision.

- d. For many of the reasons expressed in the preceding sub-paragraph, I cannot find that there has been unfairness in the working out of this process of a sort that would suggest that a termination of the APA is a desirable outcome at least where there is some reasonable basis to believe that this "last chance" option might succeed.

[42] The Monitor will be authorized to consider and if thought advisable to agree to an extension of the outside closing date under the APA to November 16, 2018 having regard to my reasons expressed above.

(b) Breach of Confidentiality Obligations

[43] I remain very, very concerned with the information I have received regarding possible breaches of solemn confidentiality obligations.

[44] One of the greatest attributes of the CCAA and the genius of the Canadian approach to the restructuring process generally is the flexibility and pragmatism that informs its procedures. Properly used, this can translate to swifter and better outcomes for stakeholders. Abused, this advantage can quickly become the Achilles heel of our system.

[45] While flexibility and pragmatism as operating principles free the system from the weight of rules and procedures that add no tangible value to stakeholder outcomes, these same principles impose a corresponding responsibility on the stakeholders to respect the integrity of the process. There are a large number of very vulnerable parties in restructuring proceedings. A debtor company's financial affairs are of great concern to its creditors but are also of great interest to its competitors if for different reasons. Every buyer of assets is looking for an edge and would like to eliminate competitive bids. Confidentiality agreements and NDA's have evolved as a critical tool to enable the court to protect a vulnerable estate and its stakeholders from being unduly put at risk by those with a vested interest in doing so. The entire process relies for its smooth functioning on the faith one and all can have in the integrity of the process. Unheralded and laden with boilerplate though they may be, NDA's play a critical role in maintaining that integrity.

[46] Receiving news that a purchaser has established unsanctioned data rooms and that parties unscreened by the Monitor have had wholesale access to sensitive commercial information stored there is unsettling in the extreme. We cannot permit our

system to degrade to one of parties cynically breaching obligations when it suits them with the intention of asking for forgiveness instead of permission. The end will not justify the means.

[47] The unexpected degree of pressure this purchaser has found itself under does not excuse these alleged breaches of confidentiality obligations even if it begins to offer the germ of an explanation. I cannot find on the evidence thus far uncovered that there was an intention to take advantage of the debtor or the debtor's stakeholders so much as an attempt to prevent the considerable losses that would be visited upon the purchaser by a collapse of this deal. There is some mitigation to be found in that negative fact.

[48] I have by no means reached a conclusion as to what consequences ought to follow from the breaches of confidentiality that have been outlined to me. The evidence is incomplete and there has been no time for considered argument by either side. However, I am satisfied that whatever has happened has not been actuated by an intention to undermine the integrity of the sales process even if the purchaser appears to have shown a considerable degree of disregard for it.

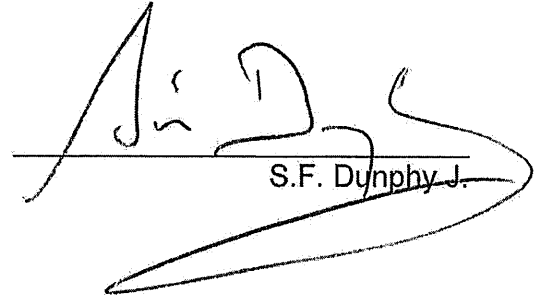
[49] I am therefore satisfied that the question of what breaches if any have occurred and what consequences ought to flow from them is one that can be addressed separately from the question of whether the APA ought to be given one last chance to close.

### Disposition

[50] In summary then the following advice and directions are given to the Monitor:

- a. The Monitor will be authorized to consider and if thought advisable to agree to an extension of the outside closing date under the APA to November 16, 2018 having regard to my reasons expressed above;
- b. In considering any such extension agreement, the Monitor should be satisfied both as to the terms provided and that the extension is without prejudice to any rights arising from the breaches of confidentiality raised in the Monitor's Sixth Report;
- c. The Monitor is authorized to arrange a hearing before me at 8:30 a.m. (maximum 90 minutes) on November 13, 14 or 15 through the Commercial List office to deal with any clean-up issues necessary to facilitate closing of the APA should this occur and, at such time, to report to me further regarding the breaches of confidentiality and any proposed actions to be taken in consequence as well as regarding the re-modelled cash flow dealing with the final transaction structure and the financial stability of the operator of the Dundee assets going forward; and
- d. The Monitor is directed to take such steps as it deems necessary to be in a position to resume the sales process at a running start should this

transaction fail to close on November 16, 2018. It must be clear to all that this is the LAST chance to salvage this APA.



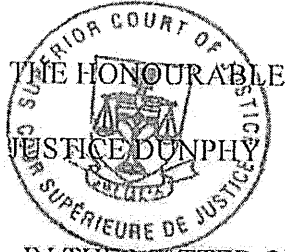
S.F. Dynphy J.

**Date:** October 24, 2018



**APPENDIX "E"**

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



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WEDNESDAY, THE 14<sup>th</sup>  
DAY OF NOVEMBER, 2018

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  
DUNDEE OIL AND GAS LIMITED

**ESCROW ARRANGEMENT, STAY EXTENSION AND SALE PROCESS ORDER**

**THIS MOTION**, made by Dundee Oil and Gas Limited ("**DOGL**") on its behalf and as general partner on behalf of Dundee Energy Limited Partnership ("**DELP**" and together with DOGL, the "**Debtors**") for an order: (i) approving the escrow arrangement with respect to funds paid to each of National Bank of Canada (the "**Bank**") and FTI Consulting Canada Inc., in its capacity as the Court-appointed monitor (the "**Monitor**") on account of the Purchase Price payable pursuant to the APA (as defined below); (ii) extending the stay of proceedings; and (iii) in the event that the APA is terminated, approving the Revised SSP (as defined below and as described in the seventh report of the Monitor dated November 12, 2018 (the "**Seventh Report**")), was heard this day at 361 University Avenue, Toronto, Ontario.

**ON READING** the Seventh Report and on hearing the submissions of counsel for the Monitor, the Debtors, the Bank, Lagasco Inc. (the "**Buyer**"), Ministry of Natural Resources and

Forestry (“MNRF”), Canadian Overseas Petroleum Limited, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Rachel Bengino sworn on November 13, 2018, filed:

1. **THIS COURT ORDERS AND DECLARES** that service of the Seventh Report and Motion Record is hereby validated and further service thereof is hereby dispensed with.
2. **THIS COURT ORDERS** that any capitalized terms not otherwise defined herein shall have the meaning set forth in the Approval and Vesting Order granted by the Court on June 11, 2018 (the “**Approval and Vesting Order**”) or the Asset Purchase Agreement dated April 4, 2018 between the Buyer and the Debtors (as amended, the “**APA**”).

#### **ESCROW ARRANGEMENT**

3. **THIS COURT ORDERS** that, forthwith upon, and not prior to, written confirmation from (i) the Bank’s counsel that it has received from counsel to the Buyer the Purchase Price (net of the Deposit and certain other amounts in accordance with the flow of funds as agreed to by the Parties) pursuant to paragraph 29 of the Approval and Vesting Order (the “**Bank Escrow Funds**”), which the Bank’s counsel shall hold in escrow in accordance with the terms of this Order; and (ii) the Monitor that it has received from counsel to the Buyer the Cure Costs and MNRF Leases royalty payments (the “**Monitor Escrow Funds**”), which the Monitor shall hold in escrow in accordance with the terms of this Order, the Buyer or its counsel, shall register the Applications to Amend Based on Court Order as required in the Transferred Leases Order (On-shore) and Transferred Leases Order (Off-shore) (collectively, the “**Applications**”) granted by this Court on November 14, 2018, upon

which time, the applicable Land Registry Offices and/or Land Titles Offices will be required to carry out the directions set forth in such Orders.

4. **THIS COURT ORDERS** that the Buyer or its counsel shall exercise reasonable efforts to complete all registrations of the Applications to Amend Based on Court Order with respect to the Transferred Leases (On-shore) Order prior to commencing the registrations of the Applications to Amend Based on Court Order with respect to the Transferred Leases (Off-shore) Order, save and except those four (4) registrations in the Land Registry Office for the Land Titles Division of Norfolk under the Registry System, which are included in paragraph 6 to the Transferred Leases (Off-shore) Order, and which may be registered concurrently with the registrations of the Applications to Amend Based on Court Order with respect to the Transferred Leases (On-shore) Order.
  
5. **THIS COURT ORDERS** that, in the event any of the Applications are not accepted for registration by the applicable Land Registry Office and/or Land Titles Office, the Buyer shall immediately cease making any further registrations of remaining Applications and the Buyer and the Debtors shall take steps to rectify any issue(s) leading to such rejection. In the event any such issue(s) is not rectified or waived by the Buyer and, as a result, the Buyer cannot proceed with Closing of the Transaction under the APA, the Buyer shall immediately notify the Debtors, the Bank and the Monitor and promptly make such filings as are necessary (the "**Title Reversion Registrations**") to revert to DOGL title and the interests in any on-shore Leases and off-shore Leases already assigned to the Buyer by virtue of the registrations contemplated in paragraphs 3 and 4 above (the "**Pre-Closing Transferred Leases**") and to discharge and delete from the title to any Leases all security registered in favour of the Buyer's lender from title (the "**Lien Discharge Registrations**")

and together with the Title Reversion Registrations, the “**Reversion**”) in a manner satisfactory to the Debtors, the Monitor and the Bank.

6. **THIS COURT ORDERS** that, if on or before 3:00 p.m. on November 16, 2018, the Bank, the Debtors and the Monitor have not received written confirmation from the Buyer that all required Applications have been registered together with the security interests in favour of the Buyer’s lender registered concurrently with the Applications (collectively, the “**Buyer Registration Condition**”) or that it has waived the Buyer Registration Condition, the Debtors shall be authorized to terminate the APA without prejudice to any of the Debtors’ rights and remedies thereunder and the Monitor shall retain the Deposit pending further order of the Court and the Buyer and its counsel will forthwith complete the Reversion in a manner satisfactory to the Debtors, the Monitor, the Bank, and with respect to any transferred off-shore Leases, the MNRF.
7. **THIS COURT ORDERS** that upon completion of the Reversion set out in paragraphs 5 and 6 herein to the reasonable satisfaction of the Debtors, the Monitor, the Bank, and with respect to any transferred off-shore Leases, the MNRF, as evidenced by written confirmation from such parties, the Bank’s counsel shall return to the Buyer’s counsel the Bank Escrow Funds (or such other person as the Buyer’s counsel directs in writing) and the Monitor shall return to the Buyer’s counsel the Monitor Escrow Funds (in either case without interest or deduction).
8. **THIS COURT ORDERS** that if, on or before 3:00 p.m. on November 16, 2018: (i) the Buyer has satisfied the Buyer Registration Condition or provided written notice to the Monitor, Debtors and the Bank that the Buyer Registration Condition has been waived;

and (ii) the Monitor has received a certificate confirming that all conditions to Closing as set out in articles 11 and 12 of the APA have been satisfied or waived by the Debtors and the Buyer, as applicable, then the following actions shall be forthwith taken: (A) the Bank's counsel is hereby authorized and directed to release the Bank Escrow Funds from escrow in favour of the Bank; (B) the Buyer's counsel is directed to deliver to the applicable Governmental Authority certified cheques in full repayment of Municipal Taxes owing to each applicable Governmental Authority; and (C) the Buyer's counsel is directed to pay the amount to Nadro Marine Services Limited set out in the Direction;

9. **THIS COURT ORDERS AND DECLARES** that between the time of registration of each Pre-Closing Transferred Lease and delivery of the Monitor's Certificate:
- a) the Buyer shall hold title to and interests in Pre-Closing Transferred Leases as nominee and agent for and on behalf of the Debtors;
  - b) the Buyer shall otherwise have no legal or beneficial interest in the Pre-Closing Transferred Leases;
  - c) all other attributes of the beneficial interest in the Pre-Closing Transferred Leases shall be and remain with the Debtors; and
  - d) the Buyer shall enter into, and execute and deliver, all such instruments and other agreements as may from time to time be reasonably requested by the Debtors, the Monitor and/or the Bank, along with any affected counterparty to each Pre-Closing Transferred Lease, in connection with the Pre-Closing Transferred Leases.
10. **THIS COURT ORDERS AND DIRECTS** that, in its capacity as nominee, the Buyer shall promptly deliver to the Debtors all instruments with respect to Pre-Closing

Transferred Leases, together with all recording information relative thereto, to the extent that the Buyer may come into possession of any such instrument or information. All rents, profits, emoluments and other receipts and revenues of any nature or kind arising from the Pre-Closing Transferred Leases or the use thereof shall belong beneficially to the Debtors, and the Buyer shall have no beneficial interest in such rents, profits, emoluments and other receipts and revenues. The Buyer shall, subject to the rights of any mortgagee or other secured creditor, promptly remit to the Debtors all profits, emoluments and other receipts and revenues of any nature or kind arising from the Pre-Closing Transferred Leases which may be received by the Buyer as nominal party to any instrument. The Buyer shall promptly transmit to the Debtors copies of all notices, claims, demands or other communications which the Buyer may receive and which relate in any way to the Pre-Closing Transferred Leases.

11. **THIS COURT ORDERS** that the Pre-Closing Transferred Leases and the Reversion, if effected, shall not impair the title of the Debtors, the security interest of the Bank or the interest of any affected counterparty to each Pre-Closing Transferred Lease and that such interests shall continue as they did before the Pre-Closing Transferred Leases and Reversion as if they did not occur.
12. **THIS COURT ORDERS** that the sole obligation of the Bank's counsel relating to the Bank Escrow Funds shall be as set out in this Order, or in any further orders of the Court and the Bank's counsel shall be entitled to seek advice and directions from this Court in respect of the Bank Escrow Funds.

13. **THIS COURT ORDERS** that the Monitor and the Debtors are hereby authorized to seek such assistance or relief from the Court as may be required to achieve the Reversion.
14. **THIS COURT ORDERS** that the Buyer and its lender are hereby authorized to seek such assistance or relief from the Court as may be required to effect the registration of the Applications with any applicable Land Registry Office and/or Land Titles Office.
15. **THIS COURT ORDERS** that nothing herein shall be an amendment to the APA and neither the Buyer Registration Condition nor any other provision of this Order shall constitute a condition to Closing in favour of the Buyer under the APA.

#### **MONITOR'S CERTIFICATE**

16. **THIS COURT ORDERS** that the Monitor shall not deliver the Monitor's Certificate to the Buyer until (i) the conditions set forth in paragraph 8 herein have been satisfied; (ii) the Buyer's counsel confirms to the Monitor that it has issued the payments set out in paragraph 8 herein; and (iii) the Transaction has been completed to the satisfaction of the Debtors and the Monitor. The Monitor's Certificate must be delivered on or before 4:00 p.m. on November 16, 2018, failing which the Debtors shall be authorized to terminate the APA without prejudice to any of the Debtors' rights and remedies thereunder and the Monitor shall retain the Deposit pending further order of the Court.
17. **THIS COURT ORDERS** that, notwithstanding paragraph 29 of the Approval and Vesting Order, the Monitor is hereby authorized and directed, without further Order of the Court, to on Closing, transfer the Deposit, net of the Professional Fee Reserve and any other



amounts as may be agreed to among the Bank and the Monitor to fund the Debtors' post filing obligations, to the Seller's account with the Bank.

**REMAINING APPLICATIONS TO AMEND BASED ON COURT ORDER**

18. **THIS COURT ORDERS** that, for greater certainty, only upon, and not prior to, the delivery of the Monitor's Certificate to the Buyer, the Buyer, or its counsel, shall register the Applications for Vesting Order as required in the Approval and Vesting Order, upon which time, the applicable Land Registry Offices and/or Land Titles Offices will be required to carry out the directions set forth in such Order.
19. **THIS COURT ORDERS** that, for greater certainty, only upon, and not prior to, the delivery of the Monitor's Certificate to the Buyer, the Buyer, or its counsel, shall register the Applications to Amend Based on Court Order as required in the Discharges Order granted by this Court on November 14, 2018, upon which time, the applicable Land Registry Offices and/or Land Titles Offices will be required to carry out the directions set forth in such Order.
20. **THIS COURT ORDERS** that, for greater certainty, only upon, and not prior to, the delivery of the Monitor's Certificate to the Buyer, the Debtors, or their counsel, shall register the Applications to Amend Based on Court Order as required in the Surrendered Leases Order granted by this Court on November 14, 2018, upon which time, the applicable Land Registry Offices and/or Land Titles Offices will be required to carry out the directions set forth in such Order.

**TREATMENT OF UNCASHED CURE COSTS**

21. **THIS COURT ORDERS** that if any payment of a Cure Cost by the Monitor to a counterparty to an Assigned Contract pursuant to paragraph 21 of the Approval and Vesting Order remains uncashed or remains returned as undeliverable on the date that is ~~two (2)~~ <sup>three</sup> months after the Closing, such Cure Cost shall be forever barred as against the Debtors without any compensation therefor, at which time any cash held by the Monitor in relation to such uncashed or unclaimed payment shall be delivered to the Bank. Nothing herein shall require the Monitor to attempt to locate any counterparty to an Assigned Contract whose payment is not cashed within the aforesaid period.

APD  
3

**STAY EXTENSION**

22. **THIS COURT ORDERS** that the Stay Period as ordered and defined in paragraph 17 of the Initial Order dated February 13, 2018 (the "**Initial Order**") is hereby extended until and including January 30, 2019.

**APA**

23. **THIS COURT ORDERS** that in the event that, on or before November 16, 2018, the Monitor has not delivered the Monitor's Certificate in accordance with the APA and the Approval and Vesting Order as a result of the Buyer's failure to close the Transaction, the Debtors are authorized to terminate the APA without prejudice to any of the Debtors' rights and remedies thereunder and the Monitor shall retain the Deposit pending further order of the Court.

5:00 p.m. on  
APD

**REVISED SSP**

24. **THIS COURT ORDERS** that, in the event that the Transaction under the APA does not close on or before November 16, 2018, the revised sale solicitation process (the “**Revised SSP**”) attached hereto as **Schedule “A”** (subject to such non-material amendments as may be agreed to by the Monitor and the Bank) be and is hereby approved and the Monitor is hereby authorized and directed to take such steps as it deems necessary or advisable to carry out the Revised SSP, subject to prior approval of this Court being obtained before completion of any transaction(s) under the Revised SSP.
25. **THIS COURT ORDERS** that the Monitor shall have the benefit of all rights and protections granted to it in the Sale Solicitation Process Order dated August 16, 2017 and the Initial Order in carrying out the Revised SSP.

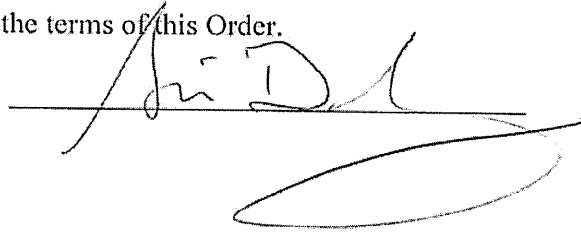
**TRUSTEE IN BANKRUPTCY TO HOLD FUNDS**

26. **THIS COURT ORDERS** that upon the appointment of FTI Consulting Canada Inc., or any other entity or person as Trustee in Bankruptcy of either or both of the Debtors (“**Trustee**”), such Trustee shall be bound by the terms of this Order and the Approval and Vesting Order dated June 11, 2018.

**GENERAL**

27. **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 Debtors and the Monitor 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 Debtors and the Monitor as may be necessary or desirable to give effect to this Order or to assist the Debtors and the Monitor in carrying out the terms of this Order.

A handwritten signature in black ink, appearing to be "J. D.", is written over a horizontal line. Below the line is a large, loopy flourish.

ENTERED AT / INSCRIT À TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO:

NOV 15 2018

PER / PAR:

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## Schedule "A"

### Revised Sale Solicitation Process Dundee Energy Limited Partnership and Dundee Oil and Gas Limited

1. On August 15, 2017, Dundee Energy Limited Partnership and its general partner, Dundee Oil and Gas Limited ("DOGL") (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. By order dated August 16, 2017, the Ontario Superior Court of Justice (Commercial List) (the "Court") approved a sale solicitation process (the "BIA SSP") 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. By order dated February 13, 2018, the Court continued the NOI Proceedings for DOGL under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c.C.-36 (as amended, "CCAA") and appointed FTI as the Monitor (the "Monitor") (the "CCAA Proceedings").
4. By order dated June 11, 2018, the Court, *inter alia*, approved the sale to Lagasco Inc. of substantially all of the Debtors' assets (the "Transaction") pursuant to an Asset Purchase Agreement dated April 4, 2018 (as amended, the "APA"). The parties failed to close the Transaction prior to the outside date for Closing set out in the APA, being November 16, 2018.
5. The Debtors intend to seek an order (the "Revised SSP Order") authorizing the Monitor to carry out a revised sale solicitation process (the "Revised SSP"). The Revised 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

6. All capitalized terms used in the Revised SSP and not otherwise defined have the meanings given to them below:

"Approval Motion" as defined in paragraph 23;

"Bid Deadline" as defined in paragraph 16.

- "**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;
- "**CCAA Proceedings**" as defined in paragraph 3;
- "**Claims and Interests**" as defined in paragraph 32;
- "**Confidential Information Memorandum**" as defined in paragraph 13;
- "**Court**" as defined in paragraph 2;
- "**Data Room**" as defined in paragraph 13;
- "**Debtors**" as defined in paragraph 1;
- "**Deposit**" as defined in paragraph 16(m);
- "**Final Bid**" as defined in paragraph 15;
- "**Form of Purchase Agreement**" means the form of purchase and sale agreement to be developed by the Monitor and provided to Qualified Bidders;
- "**FTI**" as defined in paragraph 1;
- "**Known Potential Bidders**" as defined in paragraph 10;
- "**Lender**" means National Bank of Canada;
- "**Monitor**" as defined in paragraph 3.
- "**NDA**" means a non-disclosure agreement in form and substance satisfactory to the Monitor, which will inure to the benefit of any purchaser of the Property;
- "**NOI Proceedings**" as defined in paragraph 1;
- "**Potential Bidder**" as defined in paragraph 10;
- "**Property**" means the assets, properties and undertakings of the Debtors or any portion thereof;
- "**Proposal Trustee**" as defined in paragraph 1;
- "**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 Monitor; and (b) has executed or is bound by a NDA;
- "**Qualified Bid**" means a third party offer to purchase some or all of the Property in the form specified by the Revised SSP;
- "**Qualified Bidder**" as defined in paragraph 12;

“Revised SSP Order” as defined in paragraph 5;

“Sale Process” means the sale solicitation process carried out by the Monitor pursuant to the terms of the Revised SSP; and

“Successful Bid” as defined in paragraph 21.

“Successful Bidder” as defined in paragraph 21.

**Conduct of Sale Process and Timeline**

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

<b>Milestone</b>	<b>Deadline</b>
Commencement Date	November 19, 2018
Bid Deadline	January 11, 2019
Settle and execute a binding asset purchase agreement with respect to the Successful Bid	January 25, 2019
Date by which Approval Motion is heard	February 8, 2019
Closing of the transaction(s) with Successful Bidder(s)	March 8, 2019

**Opportunity**

10. As soon as practicable following issuance of the Revised SSP Order, the Monitor shall, in consultation with the Debtors, the Lender and any other stakeholder as deemed appropriate by the Monitor, prepare a list of persons that submitted a letter of intent in the BIA SSP (the “**Known Potential Bidders**”) along with any other potential bidders that have expressed interest in acquiring a portion or all of the Property (together, the “**Potential Bidders**” and individually a “**Potential Bidder**”). The Monitor shall contact each Potential Bidder to advise them of the opportunity.

**Participation Requirements**

11. In order to participate in the Sale Process, each Potential Bidder must deliver to the Monitor 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 (if a NDA had not already been executed in the BIA SSP), which, among other things, shall include provisions whereby the Potential Bidder agrees to accept and be bound by the Revised SSP.
12. A Potential Bidder that has executed a NDA, and has delivered the documents and information described above, and that the Monitor, 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 Monitor. **In no event shall the Lender constitute a Qualified Bidder.**
13. The Monitor shall provide to each Qualified Bidder that has executed a NDA a confidential information memorandum (the "**Confidential Information Memorandum**") describing the opportunity to acquire all or a portion of the Property along with access to an electronic data room with due diligence information (the "**Data Room**"). The Monitor, 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 the Sale Process, 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. At any time during the Sale Process, the Monitor 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.

**Qualified Bidders and submission of Final Bid**

15. At the request of a Qualified Bidder, its Qualified Advisors will be granted access to such due diligence materials and information relating to the Property and the Business as the Monitor 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 information in the Data Room. In addition, selected due diligence materials may be withheld from a Qualified Bidder if the Monitor determines such information to represent proprietary or sensitive competitive information.



16. A Qualified Bidder that wishes to proceed must deliver to the Monitor 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 Monitor by no later than **12:00 p.m. (Eastern Time) on January 11, 2019**, or such other date or time as may be determined by the Monitor in consultation with the Lender (the "Bid Deadline").
17. A Final Bid will be considered a Qualified Bid only if (a) it is submitted by a Qualified Bidder; 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 Bid Deadline, provided that if such Qualified Bidder is selected as a Successful Bidder, its offer will remain irrevocable until the closing of the transaction with the Debtors;
  - (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 Monitor to make a reasonable determination as to the Qualified Bidder's financial and other capabilities to consummate the transaction contemplated by its Final Bid and ability to perform its obligations under any assumed contracts;
  - (c) sets out the purchase price range in Canadian dollars, 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 Monitor, 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 Monitor), or such other form acceptable to the Monitor, payable to the order of the Monitor, 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 Revised SSP;
  - (n) it contains other information reasonably requested by the Monitor;
  - (o) it is received by the 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 Monitor, 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.
18. The Monitor 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 Monitor of the requirements of the foregoing paragraph or an obligation on the part of the Monitor to designate any other Final Bid as a Qualified Bid. The Monitor will be under no obligation to negotiate identical terms with, or extend identical terms to, each Qualified Bidder.

### **Evaluation of Qualified Bids**

19. The Monitor, in consultation with the Lender, will review each Final Bid received. For the purpose of such consultation and evaluations, the Monitor may request clarification of the terms of any Final Bid.
20. 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.
21. If one or more Qualified Bids is received or so designated by the Monitor, the Monitor, 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 Monitor, on behalf of the Debtors, shall proceed to negotiate and settle the terms of a definitive agreement with the applicable Qualified Bidder (each, a "**Successful Bidder**"). The terms of any such definitive agreement must be acceptable to the Monitor and the Lender, each in its discretion.
22. Following the Bid Deadline, the Monitor 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 Monitor may choose to take such steps with respect to one or more Qualified Bidder but the Monitor shall have no obligation to negotiate identical terms with, or extend identical terms to, each Qualified Bidder. The Monitor 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 Monitor. The Monitor will be under no obligation to provide to each Qualified Bidder the opportunity to improve the terms of any Final Bid submitted to the Monitor following the Bid Deadline.

### **Additional Guidelines**

23. If the Monitor determines that no Qualified Bid has been received by the Bid Deadline, the Monitor 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 Monitor, any of the Lender, the Monitor 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**

24. 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).

25. 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 Monitor, 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.
26. 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**

27. All Deposits will be retained by the Monitor 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 five (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 five (5) Business Days of the date upon which the Sale Process is terminated in accordance with the Revised SSP.
28. 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**

29. 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 CCAA Proceedings or any statute or as otherwise required at law in order to implement a Successful Bid.

#### **Amendment**

30. The Monitor may vary or amend the Revised SSP (including, without limitation, extending the Bid Deadline) with the consent of the Lender or the approval of the Court.
31. The Sale Process does not, and will not be interpreted to, create any contractual or other legal relationship between the Monitor 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 Monitor may apply to the Court for advice and directions with respect to the discharge of its power and duties hereunder.

**"As Is, Where Is"**

32. 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 Monitor, 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 Monitor, 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 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**

33. 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**

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

**Further Orders**

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

Exhibit "A"

Address

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

Attention: Messrs. Dean Mullett and Adam Zalev

**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 DUNDEE OIL AND GAS LIMITED**

Court File No.: CV-18-591908-00CL

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

Proceedings commenced at Toronto

**ESCROW ARRANGEMENT, STAY EXTENSION AND  
SALE PROCESS ORDER**

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