

Court File No. CV-24-00002452-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

THE TORONTO-DOMINION BANK

Applicant

-and-

MALAKAND PETROLEUM INC.

Respondent

APPLICATION RECORD OF THE APPLICANT

Returnable October 3, 2024

July 3, 2024

HARRISON PENSA LLP

Barristers & Solicitors
130 Dufferin Avenue, Suite 1101
London, ON N6A 5R2

Timothy C. Hogan (LSO #36553S)

Tel: (519) 679-9660
Fax: (519) 667-3362
Email: thogan@harrisonpensa.com

Lawyers for the Applicant,
The Toronto-Dominion Bank

TO: SERVICE LIST

SERVICE LIST

TO: **MALAKAND PETROLEUM INC.**
1228 Raspberry Terrace
Milton, ON L9E 1N1

AND

TO: **MSI SPERGEL INC.**
505 Consumers Road, Suite 200
Toronto, Ontario M2J 4V8

Attention: Mukul Manchanda
Tel: (416) 498-4314
Fax: (416) 498-4314
Email: mmanchanda@spergel.ca

Proposed Receiver

AND

TO: **FOGLER, RUBINOFF LLP**
77 King Street West
Suite 3000, P.O. Box 95
TD Centre North Tower
Toronto, ON M5K 1G8

RACHEL MOSES
Tel: (416) 864-7627
Fax: (416) 941-8852
Email: rmoses@foglers.com

Lawyers for Proposed Receiver,
msi Spergel inc.

AND

TO: **FAZLE MAJEED**
1228 Raspberry Terrace
Milton, ON L9E 1N1
Email: fazlemajeed@gmail.com

Guarantor

AND

TO: **TT3 INC.**
190 Harwood Ave. S.
Suite 200
Ajax, Ontario L1S 2H6

Guarantor

AND

TO: **CANADA REVENUE AGENCY**
c/o Department of Justice
Ontario Regional Office
120 Adelaide St. W., Suite 400
Toronto, ON M5H 1T1
Email: AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca

AND

TO: **HER MAJESTY THE QUEEN IN RIGHT
OF ONTARIO AS REPRESENTED BY
THE MINISTRY OF FINANCE**
Revenue Collections Branch – Insolvency Unit
33 King Street W., P.O. Box 627
Oshawa, ON L1H 8H5
Email: insolvency.unit@ontario.ca

INDEX

INDEX

| Tab | Document | Page No. |
|-----|--|----------|
| 1 | Notice of Application, issued on June 25, 2024 | 7 |
| | Schedule “A-1” – Appointment Order (clean) | 18 |
| | Schedule “A-2” – Appointment Order (blacklined) | 36 |
| | | |
| 2 | Affidavit of Rukshana Belliappa sworn June 11, 2024 | 56 |
| | Exhibit “A” – Corporate Profile | 70 |
| | Exhibit “B” – Parcel Registry Search Results | 78 |
| | Exhibit “C” – Letter Agreement | 80 |
| | Exhibit “D” – General Security Agreement | 107 |
| | Exhibit “E” – Guarantee | 120 |
| | Exhibit “F” – Mortgage | 126 |
| | Exhibit “G” – Standard Charge Terms | 130 |
| | Exhibit “H” – Personal Property Security Registration System Search Results for the Debtor | 137 |
| | Exhibit “I” – Bank’s Letter dated May 30, 2023 | 142 |
| | Exhibit “J” – Demands with Corresponding Registered Mail Receipt | 145 |
| | Exhibit “K” – E-mail from Counsel for the Bank | 154 |

Tab 1



Court File No. CV-24-00002452-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

THE TORONTO-DOMINION BANK

Applicant

-and-

MALAKAND PETROLEUM INC.

Respondent

NOTICE OF APPLICATION

**APPLICATION UNDER SECTION 243(1) OF THE BANKRUPTCY AND INSOLVENCY ACT,
RSC 1985, C. B-3, AS AMENDED AND SECTION 101 OF THE COURTS OF JUSTICE ACT,
R.S.O. 1990, C.C.43**

TO THE RESPONDENT:

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

THIS APPLICATION will come on for a hearing:

- In person
- By telephone conference
- By video conference

at the following location:

On Thursday, October 3, 2024, at 10:00 a.m. or as soon after that time as the application can be heard by judicial teleconference via Zoom at Milton, Ontario. Zoom particulars to follow.

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

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant' lawyer, or where the applicant do not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but not later than 2 p.m. on the day before the hearing.

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

Date: June 24, 2024

Issued by Jacob Steckner
Registrar
Superior Court of Justice
491 Steeles Ave. E.
Milton, Ontario L9T 1Y7

Digitally signed by Jacob Steckner
Date: 2024.06.25 16:17:42 -04'00'

TO: Service List Attached

SERVICE LIST

TO: **MALAKAND PETROLEUM INC.**
1228 Raspberry Terrace
Milton, ON L9E 1N1

AND

TO: **MSI SPERGEL INC.**
505 Consumers Road, Suite 200
Toronto, Ontario M2J 4V8

Attention: Mukul Manchanda
Tel: (416) 498-4314
Fax: (416) 498-4314
Email: mmanchanda@spergel.ca

Proposed Receiver

AND

TO: **FOGLER, RUBINOFF LLP**
77 King Street West
Suite 3000, P.O. Box 95
TD Centre North Tower
Toronto, ON M5K 1G8

RACHEL MOSES
Tel: (416) 864-7627
Fax: (416) 941-8852
Email: rmoses@foglery.com

Lawyers for Proposed Receiver,
msi Spergel inc.

AND

TO: **FAZLE MAJEED**
1228 Raspberry Terrace
Milton, ON L9E 1N1
Email: fazlemajeed@gmail.com

Guarantor

AND

TO: **TT3 INC.**
190 Harwood Ave. S.
Suite 200
Ajax, Ontario L1S 2H6

Guarantor

AND

TO: **CANADA REVENUE AGENCY**
c/o Department of Justice
Ontario Regional Office
120 Adelaide St. W., Suite 400
Toronto, ON M5H 1T1
Email: AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca

AND

TO: **HER MAJESTY THE QUEEN IN RIGHT
OF ONTARIO AS REPRESENTED BY
THE MINISTRY OF FINANCE**
Revenue Collections Branch – Insolvency Unit
33 King Street W., P.O. Box 627
Oshawa, ON L1H 8H5
Email: insolvency.unit@ontario.ca

THE APPLICATION IS FOR:

The Applicant, The Toronto-Dominion Bank (the “**Bank**”), seeks the following relief:

1. An order (the “**Appointment Order**”) substantially in the form attached hereto as Schedule “A”, *inter alia*, appointing msi Spergel inc., as Receiver (“**Spergel**”, or the “**Receiver**”), without security, of all of the assets, undertakings and properties of the Respondent, Malakand Petroleum Inc. (the “**Debtor**”), acquired for, or used in relation to a business or businesses carried on by the Debtor, including the Real Property (as defined below);
2. That the time for service, filing and confirming of the Notice of Application and the Application Record be abridged and validated so that this application is properly returnable today and dispensing with further service thereof; and,
3. Such further and other relief as to this Honourable Court may seem just.

THE GROUNDS FOR THE APPLICATION ARE:

The Debtor

1. The Debtor is a corporation incorporated pursuant to the laws of the Province of Ontario, with its registered office located in Milton, Ontario, carrying on business as an “Esso” gas station, from owned real property, municipally known as 12 Guelph Street W., Halton Hills, Ontario, and legally described as:

LT 5, PL 438; PT LT 6, PL 438, AS IN 515429; ALSO SHOWN ON PL 1098; TOWN OF HALTON HILLS (PIN 24992-0323 LT) (the “**Real Property**”).

2. Fazle Majeed (“**Fazle**”) is a principal of the Debtor and is a guarantor of the obligations owing by the Debtor to the Bank.

The Financing and the Bank’s Security

3. As of May 14, 2024, the Debtor was indebted to the Bank in the amount of \$2,151,084.65, plus accruing interest and the Bank’s continuing costs of enforcement, including legal

costs and professional costs (the “**Indebtedness**”) in respect of financing advanced to the Debtor pursuant to the terms of a Letter of Agreement dated June 27, 2022 (the “**Letter Agreement**”).

4. The credit facilities established by the Letter Agreement are:

a. Committed Reducing Term Facility: in the sum of \$2,200,000.00;

b. Operating Loan: with a credit limit of \$75,000.00; and,

c. Credit Card Facility: with a credit limit of \$10,000

(collectively, the “**Financing**”).

5. The Bank holds, *inter alia*, the following as security for the Financing:

a. General Security Agreement from the Debtor dated July 4, 2022 (the “**GSA**”);

b. Guarantee from Fazle dated July 4, 2022, unlimited in sum; and

c. Charge/Mortgage of Land from the Debtor, in the principal sum of \$ 2,300,000, receipted as instrument number HR1907865 on July 18, 2022 (the “**Mortgage**”), over the Real Property

(5(a) – (c) collectively, the “**Security**”, or the “**Bank’s Security**”).

The Bank’s Security Interest in the Debtor’s Personal Property

6. The Bank has registered Financing Statements against the Debtor pursuant to the provisions of the *Personal Property Security Act* (Ontario) to perfect its security interest in the property of the Debtor secured under the GSA.

7. The Personal Property Security Registration System Search Results for the Debtor

confirm that the Bank has a perfected security interest in the personal property of the Debtor secured under the GSA.

The Bank's Security Interest in the Real Property

8. The Bank's interest in the Real Property is secured by the Mortgage, which is a first charge.

Defaults, Demands and Communications

9. On May 30, 2023, the Bank advised the Debtor by way of letter of the Debtor's various defaults under the Letter Agreement.
10. The Debtor defaulted under the terms of the Financing as a result of, *inter alia*:
 - a. failing to make payments as they became due;
 - b. subsequent encumbrances against the Real Property; and,
 - c. failing to maintain a Debt Service Coverage (as defined in the Letter Agreement) ratio of not less than 120%(collectively, the "**Defaults**").
11. As a result of the Defaults, the Bank did deliver to the Debtor a demand for payment and a Notice of Intention to Enforce Security pursuant to section 244(1) of the *Bankruptcy and Insolvency Act* (the "**BIA**"), each dated December 4, 2023 (the "**Demand**"). The Bank also delivered a demand to Fazle as the guarantor of the Debtor, also dated December 4, 2023.
12. The Debtor advised the Bank that the Real Property was listed for sale, with the eventual sale proceeds to be used to pay the Indebtedness.
13. The Bank provided the Debtor with a period of day-to-day forbearance to complete a sale of the Real Property.

14. To date, no sale of the Real Property has been completed and no evidence has been provided to the Bank that repayment of the Indebtedness or a sale of the Real Property is imminent.
15. All statutory notice periods in relation to the Demand have expired and the Indebtedness remains unpaid.

The Appointment of a Receiver

16. The Indebtedness due pursuant to the Demand has not been paid. The ten (10) day period under section 244 of the *BIA* has expired. The Bank is in a position to appoint a receiver over the assets and property of the Debtor, including the Real Property, pursuant to section 243 of the *BIA*.
17. The provisions of the Bank's Security provide the Bank with the power to appoint a Receiver over all of the personal property of the Debtor as secured by the GSA and the Mortgage.

The Bank's Position

18. The Debtor is in default of the Financing, and the Defaults continue. No further credit nor banking services are available to the Debtor.
19. The Debtor is insolvent, the Demand has expired, and the Bank is in a position to seek the order appointing the Receiver, pursuant to the provisions of the GSA and the Mortgage.
20. The Debtor has been unable to complete a sale of the Real Property, despite being provided significant time in which to do so.

21. The Appointment of a Receiver is necessary in order to complete an orderly sale of the Debtor's property and apply any proceeds of such sale to the obligations of the Debtor.
22. It is the Bank's position that the appointment of the Receiver is just and equitable and is necessary for the protection of the estate of the Debtor, and the interests of the Bank, as secured creditor, and other stakeholders.
23. The Bank proposes that Spergel be appointed as Receiver, without security, over all of the assets, undertakings, and properties of the Debtor, including the Real Property.
24. Spergel has consented to act as Receiver should this Honourable Court so appoint it.
25. Section 243 of the *Bankruptcy and Insolvency Act, R.S.C., 1985, c. B-3, as amended*.
26. Section 101 of the *Courts of Justice Act, R.S.O. 1990, c. C.43, as amended*.
27. Rule 3, 14, 38 and any other applicable Rule of the *Rules of Civil Procedure*.
28. Such further and other grounds as counsel may advise.

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

1. The Notice of Application and all Schedules thereto;
2. The Affidavit of Rukshana Belliappa, to be sworn, and all Exhibits thereto;
3. The Consent of the Receiver; and,
4. Such further and other material as counsel may advise and this Honourable Court may permit.

June 18, 2024

HARRISON PENZA LLP
Barristers & Solicitors
130 Dufferin Avenue, Suite 1101
London, ON N6A 5R2

Timothy C. Hogan (LSO #36553S)

Tel: (519) 661-6743
Fax: (519) 667-3362
Email: thogan@harrisonpensa.com

Lawyers for the Applicant,
The Toronto-Dominion Bank

Schedule "A-1" – Appointment Order (Clean)

ONTARIO

SUPERIOR COURT OF JUSTICE

| | | |
|----------------|---|--------------------|
| THE HONOURABLE |) | WEEKDAY, THE # |
| |) | |
| JUSTICE |) | DAY OF MONTH, 20YR |

THE TORONTO-DOMINION BANK

Applicant

- and -

MALAKAND PETROLEUM INC.

Respondent

ORDER
(Appointing Receiver)

THIS APPLICATION made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing msi Spergel inc. as receiver and manager (in such capacities, the "Receiver") without security, of all of the assets, undertakings and properties of Malakand Petroleum Inc. (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, including the real property described at Schedule "A" hereto and owned by the Debtor (the "Real Property"), was heard this day at 491 Steeles Ave E, Milton, Ontario.

ON READING the affidavit of Rukshana Belliappa sworn [DATE] and the Exhibits thereto and on hearing the submissions of counsel for the Applicant, no one appearing although duly served as appears from the affidavit of service of [NAME] sworn [DATE] and on reading the consent of msi Spegel inc. to act as the Receiver,

SERVICE

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

APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, msi Spergel inc. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "Property").

RECEIVER'S POWERS

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary

course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;

- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and

negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;

- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - i. without the approval of this Court in respect of any transaction not exceeding \$25,000.00, provided that the aggregate consideration for all such transactions does not exceed \$150,000.00; and
 - ii. with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;
 - iii. and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required.
- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;

- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. THIS COURT ORDERS that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that

nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

7. THIS COURT ORDERS that the Receiver shall provide each of the relevant landlords with notice of the Receiver'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 Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

NO PROCEEDINGS AGAINST THE RECEIVER

8. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

9. THIS COURT ORDERS that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

10. THIS COURT ORDERS that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

11. THIS COURT ORDERS that 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 Debtor, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

12. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor 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 Debtor 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 Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current 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 Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

13. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post Receivership Accounts") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

14. THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

15. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or 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 the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

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

LIMITATION ON THE RECEIVER'S LIABILITY

17. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

18. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "Receiver's Charge") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

20. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

21. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may

consider necessary or desirable, provided that the outstanding principal amount does not exceed \$500,000.00 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

22. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

23. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "B" hereto (the "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.

24. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

SERVICE AND NOTICE

25. 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 https://www.ontariocourts.ca/scj/practice/regional-practice-directions/eservice-%20commercial/#Part_III_The_E-Service_List) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be

effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL '<https://www.spergelcorporate.ca/engagements/>'.

26. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is 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 Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor 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

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

28. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

29. 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 Receiver and its 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 Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

30. THIS COURT ORDERS that the Receiver 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 Receiver 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.

31. THIS COURT ORDERS that the Applicant shall have its costs of this Application, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

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

Justice, Ontario Superior Court of Justice

SCHEDULE "A"

REAL PROPERTY

LT 5, PL 438; PT LT 6, PL 438, AS IN 515429; ALSO SHOWN ON PL 1098; TOWN OF HALTON HILLS (PIN 24992-0323 LT)

SCHEDULE "B"
RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that msi Spergel inc., the receiver (the "Receiver") of the assets, undertakings and properties of Malakand Petroleum Inc. acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (the "Court") dated the ___ day of _____, 20__ (the "Order") made in an action having Court file number __-_____, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 20__.

msi Spergel inc., solely in its capacity
as Receiver of the Property, and not in its
personal capacity

Per: _____

Name:

Title:

THE TORONTO-DOMINION BANK

v.

MALAKAND PETROLEUM INC.

Applicant

Respondent

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
MILTON, ONTARIO

ORDER

HARRISON PENZA LLP
Barristers & Solicitors
130 Dufferin Avenue, Suite 1101
London, Ontario N6A 5R2

Timothy C. Hogan (LSO #36553S)

Tel : (519) 679-9660

Fax: (519) 667-3362

Email: thogan@harrisonpenza.com

Lawyers for the Applicant,
The Toronto-Dominion Bank

Schedule "A-2" – Appointment Order (Blacklined)

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

| | | |
|----------------|---|--------------------|
| THE HONOURABLE |) | WEEKDAY, THE # |
| |) | |
| JUSTICE |) | DAY OF MONTH, 20YR |

THE TORONTO-DOMINION BANK PLAINTIFF¹

Applicant Plaintiff

- and -

MALAKAND PETROLEUM INC. DEFENDANT

Respondent Defendant

ORDER

(Appointing Receiver)

THIS APPLICATION MOTION made by the Applicant Plaintiff² for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing msi Spergel inc. [RECEIVER'S NAME] as receiver ~~[and manager]~~ (in such capacities, the "Receiver") without security, of all of the assets, undertakings and properties of Malakand Petroleum Inc. [DEBTOR'S NAME] (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, including the real property described at Schedule "A" hereto

¹ ~~The Model Order Subcommittee notes that a receivership proceeding may be commenced by action or by application. This model order is drafted on the basis that the receivership proceeding is commenced by way of an action.~~

² ~~Section 243(1) of the BIA provides that the Court may appoint a receiver "on application by a secured creditor".~~

and owned by the Debtor (the "Real Property"), was heard this day at 491 Steeles Ave E, Milton 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Rukshana Belliappa ~~[NAME]~~ sworn [DATE] and the Exhibits thereto and on hearing the submissions of counsel for the Applicant ~~[NAMES]~~, no one appearing ~~for [NAME]~~ although duly served as appears from the affidavit of service of [NAME] sworn [DATE] and on reading the consent of msi Spegel inc. ~~[RECEIVER'S NAME]~~ to act as the Receiver,

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Application Motion and the Application Motion is hereby abridged and validated³ so that this Application motion is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, msi Spergel inc. ~~[RECEIVER'S NAME]~~ is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "Property").

RECEIVER'S POWERS

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

~~³If service is effected in a manner other than as authorized by the Ontario Rules of Civil Procedure, an order validating irregular service is required pursuant to Rule 16.08 of the Rules of Civil Procedure and may be granted in appropriate circumstances.~~

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;

- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings.⁴—The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - i. without the approval of this Court in respect of any transaction not exceeding ~~\$25,000.00~~, provided that the aggregate consideration for all such transactions does not exceed ~~\$150,000.00~~; and
 - ii. with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;
 - iii. and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, ~~—~~or section 31 of the Ontario

~~⁴This model order does not include specific authority permitting the Receiver to either file an assignment in bankruptcy on behalf of the Debtor, or to consent to the making of a bankruptcy order against the Debtor. A bankruptcy may have the effect of altering the priorities among creditors, and therefore the specific authority of the Court should be sought if the Receiver wishes to take one of these steps.~~

Mortgages Act, as the case may be,⁵ shall not be required, ~~and in each case the Ontario Bulk Sales Act shall not apply.~~

- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

~~⁵ If the Receiver will be dealing with assets in other provinces, consider adding references to applicable statutes in other provinces. If this is done, those statutes must be reviewed to ensure that the Receiver is exempt from or can be exempted from such notice periods, and further that the Ontario Court has the jurisdiction to grant such an exemption.~~

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. THIS COURT ORDERS that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto

paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

7. THIS COURT ORDERS that the Receiver shall provide each of the relevant landlords with notice of the Receiver'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 Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

NO PROCEEDINGS AGAINST THE RECEIVER

8. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

9. THIS COURT ORDERS that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or

with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

10. THIS COURT ORDERS that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

11. THIS COURT ORDERS that 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 Debtor, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

12. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor 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 Debtor 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 Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current 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 Receiver in accordance with normal payment practices of the Debtor or

such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

13. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post Receivership Accounts") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

14. THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

15. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or 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 the Receiver, or in the alternative destroy all

such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

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

LIMITATION ON THE RECEIVER'S LIABILITY

17. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

18. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "Receiver's Charge") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.⁶

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

20. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

21. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed ~~\$500,000.00~~ (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred

~~⁶Note that subsection 243(6) of the BIA provides that the Court may not make such an order "unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations".~~

upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

22. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

23. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "BA" hereto (the "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.

24. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

SERVICE AND NOTICE

25. 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 [https://www.ontariocourts.ca/scj/practice/regional-practice-directions/eservice-%20commercial/#Part III The E-Service List](https://www.ontariocourts.ca/scj/practice/regional-practice-directions/eservice-%20commercial/#Part_III_The_E-Service_List)) ~~<http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>~~ shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL '~~<https://www.spergelcorporate.ca/engagements/>~~[@](https://www.spergelcorporate.ca/engagements/)'.

26. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is 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 Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor 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

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

28. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

29. 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 Receiver and its 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 Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

30. THIS COURT ORDERS that the Receiver 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 Receiver 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.

31. THIS COURT ORDERS that the ApplicantPlaintiff shall have its costs of this Applicationmotion, up to and including entry and service of this Order, provided for by the terms of the ApplicantPlaintiff's security or, if not so provided by the ApplicantPlaintiff's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

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

Justice, Ontario Superior Court of Justice

SCHEDULE "A"

REAL PROPERTY

LT 5, PL 438; PT LT 6, PL 438, AS IN 515429; ALSO SHOWN ON PL 1098; TOWN OF HALTON HILLS (PIN 24992-0323 LT)

SCHEDULE "BA"
RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that msi Spergel inc.~~[RECEIVER'S NAME]~~, the receiver (the "Receiver") of the assets, undertakings and properties of Malakand Petroleum Inc.~~[DEBTOR'S NAME]~~ acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice ~~(Commercial List)~~ (the "Court") dated the ___ day of _____, 20__ (the "Order") made in an action having Court file number ~~__CL__~~ _____, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 20__.

msi Spergel inc.[RECEIVER'S NAME], solely
in its capacity
as Receiver of the Property, and not in its
personal capacity

Per: _____

Name:

Title:

THE TORONTO-DOMINION BANK

v.

MALAKAND PETROLEUM INC.

Applicant

Respondent

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
MILTON, ONTARIO

ORDER

HARRISON PENZA LLP

Barristers & Solicitors
130 Dufferin Avenue, Suite 1101
London, Ontario N6A 5R2

Timothy C. Hogan (LSO #36553S)

Tel : (519) 679-9660

Fax: (519) 667-3362

Email: thogan@harrisonpenza.com

Lawyers for the Applicant,
The Toronto-Dominion Bank

THE TORONTO-DOMINION BANK

v.

MALAKAND PETROLEUM INC.

Applicant

Respondent

Court File No. CV-24-00002452-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
MILTON, ONTARIO

NOTICE OF APPLICATION

HARRISON PENZA LLP

Barristers & Solicitors
130 Dufferin Avenue, Suite 1101
London, Ontario N6A 5R2

Timothy C. Hogan (LSO #36553S)

Tel : (519) 679-9660

Fax: (519) 667-3362

Email: thogan@harrisonpenza.com

Lawyers for the Applicant,
The Toronto-Dominion Bank

Tab 2

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

THE TORONTO-DOMINION BANK

Applicant

-and-

MALAKAND PETROLEUM INC.

Respondent

AFFIDAVIT OF RUKSHANA BELLIAPPA

(Sworn June 11, 2024)

I, **RUKSHANA BELLIAPPA**, of the City of Toronto, in the Province of Ontario,

MAKE OATH AND SAY:

1. I am an Account Manager for the Applicant, The Toronto-Dominion Bank (the "**Bank**"), and as such have knowledge of the matters to which I hereinafter depose. Unless I indicate to the contrary these matters are within my own knowledge and are true. Where I have indicated that I have obtained facts from other sources, I have identified the source and I believe those facts to be true.

The Debtor

2. The Respondent, Malakand Petroleum Inc. (the "**Debtor**"), is a company incorporated pursuant to the laws of the Province of Ontario, with its registered office located in the City of Milton, Ontario. Attached hereto and marked as **Exhibit "A"** is a true copy of the corporate profile search results for the Debtor.
3. The Debtor operates an "Esso" gas station, from owned real property, municipally known as 12 Guelph Street W., Halton Hills, Ontario, and legally described as:

- i. LT 5, PL 438; PT LT 6, PL 438, AS IN 515429; ALSO SHOWN ON PL 1098; TOWN OF HALTON HILLS (PIN 24992-0323 LT) (the “**Real Property**”)

Attached hereto to this my affidavit and marked as **Exhibit “B”** is a true copy of the parcel registry search results for the Real Property

4. Fazle Majeed (“**Fazle**”) is a principal of the Debtor and is a guarantor of the obligations owing by the Debtor to the Bank.
5. The Debtor defaulted under the terms of the Letter Agreement, as defined below, as a result of the following:
 - a. failing to make payments to the Bank as they became due;
 - b. subsequent encumbrances against the Real Property; and,
 - c. failing to maintain a Debt Service Coverage (as defined in the Letter Agreement) ratio of not less than 120%(collectively, the “**Defaults**”).
6. The Bank is unwilling to provide the Debtor with any further credit or forbearance.

The Financing and The Bank’s Security

7. As of May 14, 2024, the Debtor was indebted to the Bank in the amount of \$2,151,084.65, plus the costs of enforcement, including legal and professional costs, and interest (the “**Obligations**”), in respect of certain financing advanced to the Debtor pursuant to the terms of a Letter Agreement dated June 27, 2022 (the “**Letter Agreement**”). Attached hereto and marked as **Exhibit “C”** is a true copy of the Letter Agreement.
8. The credit facilities established by the Letter Agreement to which the Bank advanced funds under are:
 - a. Term Facility: upon which the sum of \$2,117,129.43 was owing as at May 14, 2024;

- b. Operating Facility: in the sum of \$75,000.00, upon which the sum of \$33,955.22 was owing as at May 14, 2024; and
- c. Credit Card Facility: with a credit limit of \$10,000, upon which the sum of \$0.00 was owing as at May 14, 2024.

(collectively, the “**Financing**”).

- 9. The terms and conditions of the Letter Agreement required the Debtor to pay all amounts owing to the Bank thereunder when due.
- 10. As consideration for the Financing, the Bank requested and did receive, among other things, the following as security for the Financing:
 - a. General Security Agreement from the Debtor dated July 4, 2022 (the “**GSA**”). Attached hereto and marked as **Exhibit “D”** is a true copy of the GSA;
 - b. Guarantee from Fazle dated July 4, 2022, unlimited in sum (the “**Guarantee**”). Attached hereto and marked as **Exhibit “E”** is a true copy of the Guarantee; and
 - c. First position Charge/Mortgage, in the principal sum of \$2,300,000, receipted as instrument number HR1907865 on July 18, 2022, over the Real Property (the “**Mortgage**”), as governed by Standard Charge Terms No. 8520 (the “**Standard Charge Terms**”). Attached hereto to this my affidavit and marked as **Exhibit “F”** is a true copy of the Mortgage. Attached hereto to this my affidavit and marked as **Exhibit “G”** is a true copy of the Standard Charge Terms.

The Bank’s Security Interest in the Personal Property of the Debtor

- 11. The GSA secures the following personal property of the Debtor:

1. SECURITY INTEREST

The Grantor [the Respondent] hereby grants to the Bank a security interest in, and assigns (other than with respect to trade-marks), mortgages, charges, and pledges (collectively, the “Security Interest”) to the Bank, all property of the Grantor, including all property of the kind hereinafter described below, in which the Grantor now has, or

hereafter acquires, any right, title or interest, and accretions and accessions thereto (collectively called the "Collateral")...

2. OBLIGATIONS SECURED

The Security interest secures the payment and performance of all present and future obligations of the Grantor to the Bank, including all debts and liabilities, direct or indirect, absolute or contingent, matured or not, wheresoever or howsoever incurred, whether incurred before, at the time of or after the execution of this Agreement, whether the indebtedness and liability is from time to time reduced and thereafter increased or entirely extinguished and thereafter incurred again, whether arising from the dealings between the Bank and the Grantor or from other dealings or proceedings by which the Bank may be or become in any manner whatsoever a creditor of the Grantor, and in any currency, whether incurred by the Grantor alone or with another or others and whether as a principal or surety, including all interest thereon and all amounts owed by the Grantor under this Agreement for fees, costs and expenses and in respect of indemnities granted under this Agreement (collectively called the "Obligations").

12. The Bank has registered a Financing Statement as against the Debtor pursuant to the provisions of the *Personal Property Security Act* (Ontario) to perfect its security interest in the personal property of the Debtor secured under the GSA.
13. The Personal Property Security Registration System Search Results for the Debtor confirms that the Bank holds a perfected security interest in the personal property of the Debtor as secured by the GSA. Attached hereto and marked as **Exhibit "H"** is a true copy of the Personal Property Security Registration System Search Results for the Debtor, current to May 27, 2024.

The Bank's Security Interest in the Real Property

14. The Bank's interest in the Real Property is secured by the Mortgage, as governed by the Standard Charge Terms, and the Mortgage is a first charge upon the Real Property.
15. The Standard Charge Terms include, *inter alia*, the following terms (emphasis added):

1. Definitions

...

(g) Indebtedness means all monies and liabilities matured or not, whether present or future, direct or indirect, absolute or contingent, now or at any time hereafter owing or incurred, wheresoever or howsoever incurred from or by the Chargor, as principal or surety, whether alone or jointly with any other person and in whatever name style or firm,

whether otherwise secured or not and whether arising from dealings between the Bank and the Chargor or from other dealings or proceedings by which the Bank may become a creditor of the Chargor including, without limitation, advances upon overdrawn accounts or upon bills of exchange, promissory notes or other obligations discounted for the Chargor or otherwise, all bills of exchange, promissory notes and other obligations negotiable or otherwise representing money and liabilities, or any portion thereof, now or hereafter owing or incurred from or by the Chargor and all interest, damages and Costs, and all premiums of insurance upon the buildings, Fixtures and improvements now or hereafter brought or erected upon the said Property which may be paid by the Bank and Taxes.

2. Charge of Property

The Chargor has, at the request of the Bank, agreed to give this Charge as a CONTINUING COLLATERAL SECURITY for payment to the Bank ON DEMAND of the Indebtedness, provided that such security be limited to the Principal Amount plus Costs with interest thereon at the Interest Rate. Interest at the Interest Rate is calculated and payable monthly, not in advance, before and after demand, default and judgment, with interest on overdue interest and on all other amounts charged to the Chargor hereunder at the Interest Rate. The Chargor:

- i. if the Property is a freehold property, hereby charges the Property to the Bank; or
- ii. if the Property is a leasehold interest, hereby charges and subleases the Property to the Bank for and during the unexpired residue of the term of the lease, except the last day thereof, and all other estate, term, right of renewal and other interest of the Chargor in the lease;

to secure the repayment of the Indebtedness and the performance of all of the obligations of the Chargor contained herein. The Chargor hereby releases to the Bank all its claims upon the Property until the Chargor has repaid the Indebtedness and performed all of the obligations of the Chargor in the manner provided by this Charge.

3. Covenants of the Chargor

The Chargor hereby covenants with the Bank that:

(a) The Chargor will ON DEMAND pay the Indebtedness and observe all provisos, conditions and agreements contained herein;

(b) The Chargor has a good title in fee simple to the Property (unless the Chargor is a lessee of the Property), save and except prior registered encumbrances;

(c) The Chargor has the right to charge the Property to the Bank;

(d) On default, the Bank shall have quiet possession of the Property, free from all encumbrances, save as aforesaid;

(e) Covenant 1.vii, deemed to be included in this Charge by subsection 7(1) of the Land Registration Reform Act, 1984 is hereby expressly varied by providing that the Chargor will, before or after default, execute such further assurances of the Property and do such other acts, at the Chargor's expense, as may be reasonably required;

...

(h) This Charge shall be void UPON REPAYMENT of the Indebtedness upon

demand; or without demand, UPON PERMANENT REPAYMENT of the Indebtedness, with written notice to such effect to the Bank. The Chargor releases to the Bank all the Chargor's claims upon the Property subject to this paragraph; and

(i) The Chargor agrees to assign to the Bank forthwith upon the request of the Bank as additional security for payment of the Indebtedness and the performance of the covenants herein contained, any present or future lease which may be granted by the Chargor as to the whole or any portion of the Property and agrees to deliver to the Bank executed copies of all such leases at the written request of the Bank. The Chargor covenants to perform and comply with all lessor's covenants contained in any leases assigned by the Chargor to the Bank. Notwithstanding the assignment or assignments of any lease or leases by the Chargor to the Bank, it is nevertheless declared and agreed that none of the rights or remedies of the Bank under this Charge shall be delayed or in any way hindered or prejudiced by such assignment or assignments or by any act of the Bank pursuant thereto.

16. Pursuant to the Standard Charge Terms, the Mortgage secures the Obligations.

Defaults and the Demands

17. The Debtor is insolvent, and has defaulted under the Financing, as set out above.
18. On May 30, 2023, the Bank advised the Debtor by way of letter of the Debtor's various defaults under the Letter Agreement. Attached hereto to this my affidavit and marked as **Exhibit "I"** is a true copy of the Bank's letter dated May 30, 2023.
19. In August of 2023, the Debtor advised the Bank that the Real Property was listed for sale, that a sale agreement was expected by September 30, 2023, and the Obligations would be paid from the sale proceeds by October 31, 2023.
20. The Bank was not provided a sale agreement by September 30, 2023, and the Obligations were not paid by October 31, 2023.
21. The Debtor was unable to provide a signed agreement and on September 12, 2023, the Bank advised the debtor that it would be canceling the Operating Facility and the Credit Card Facility effective October 12, 2023.
22. Following a request by the Debtor to "restore" the Operating Facility and the Credit Card Facility, on September 13, 2023, the Bank advised the Debtor:

- a. the majority of the excess funds advanced by the Bank to pay out the prior mortgage over the Real Property was for working capital, however those [funds] were distributed out of the Company in 2022;
 - b. The distribution of those funds caused a Debt Service Coverage ratio default [under the Financing] and there was a negative covenant breach when a charge was put on the [Real] Property;
 - c. The Bank was agreeable to:
 - i. Reduce the line of credit limit from \$75,000 to \$40,000 in 30 days (as of Oct. 12, 2023)
 - ii. Cancel the line of credit (\$0 limit) – as of Nov. 12, 2023
 - iii. Cancel the \$10k visa - as of Nov. 12, 2023.
23. Through September 2023 the Debtor advised that it continued to work with a potential buyer or a refinancing, and as a result the Bank to permit the Operating Facility to continue through October 2023.
24. Through October 2023 the Debtor advised that it was continuing efforts to sell the gas station, and as result on October 26, 2023 the Bank advised it was agreeable to:
 - i. Reduce the line of credit limit from \$75,000 to \$40,000 in 30 days (as of Nov. 1, 2023)
 - ii. Cancel the line of credit (\$0 limit) – as of Dec. 1, 2023
 - iii. Cancel the \$10k visa - as of Dec. 1, 2023
25. On November 1, 2023, the Credit Limit on the Operating Facility was reduced to \$40,000.00.
26. On November 20, 2023, the Debtor advised the Bank that it was not able to make the November nor the December payment due on the Term Loan.
27. On December 1, 2023 the Bank advised the Debtor that the Credit Limit on the Operating Facility was \$0 and the Credit Facility was terminated.
28. As a result of the continuing Defaults, the failure of the Debtor to sell the Real Property, and the payment defaults, the Bank did deliver a demand for payment and a Notice of Intention to Enforce Security to the Debtor, both dated December

- 4, 2023, pursuant to section 244(1) of the *Bankruptcy and Insolvency Act* (the "**BIA**"). The Bank also issued a demand for payment to Fazle, dated December 4, 2023 (the "**Guarantor Demand**") (collectively, the "**Demands**"). Attached hereto to this my affidavit and marked as **Exhibit "J"** is a true copy of the Demands with the corresponding registered mail receipt.
29. Following the Demands, the Debtor advised the Bank's counsel that the Real Property was again listed for sale, with the eventual sale proceeds to be used to pay the Obligations.
 30. The Bank provided the Debtor with a period of day-to-day forbearance to complete a sale of the Real Property.
 31. In January 2024, the Real Property remained listed for sale by the Debtor and the Bank and Bank counsel continued correspondence with the Debtor on the marketing of the Real Property and potential terms of forbearance.
 32. On May 22, 2024, counsel for the Bank advised the Debtor that the Bank has been in a position to enforce its security since December 15, 2023, and has provided day-to-day forbearance to the Debtor to allow the Debtor to be market for sale the Real Property or for a refinancing to be pursued. However, as the Debtor has been unable to complete a sale or a refinancing, the Bank would be applying to the Court for an Order appointing a Receiver over the property of the Debtor. Attached hereto and marked as **Exhibit "K"** is a true copy of the e-mail from counsel for the Bank.
 33. On June 11, 2024, counsel for the Bank inquired with the Debtor as to whether the Real Property was listed for sale. The Debtor advised counsel for the Bank that the Debtor was reducing the listing price for the Real Property and that the Real Property would be listed for sale in two days.
 34. The Debtor has not provided any evidence that a sale of the Real Property or a refinancing of the Obligations is imminent.
 35. All statutory notice periods in relation to the Demands have expired, and the Debtor and Fazle have failed to repay the Obligations due, despite the Demands.

The Appointment of a Receiver

36. The Obligations due pursuant to the Demands have not been paid. The Debtor is in default of the Financing.
37. The ten (10) day period under section 244(1) of the *BIA* has expired. The Bank is in a position to appoint a receiver over the property of the Debtor as secured pursuant to the Security, pursuant to section 243 of the *BIA*.

Personal Property

38. Paragraph 12 of the GSA grants the Bank the right to appoint a Receiver over the personal property of the Respondent secured thereunder as a result of the Defaults, as follows:

12. REMEDIES

(a) Upon the occurrence of an event of default that has not been cured or waived, the Bank, in addition to any right or remedy otherwise provided herein or by law or in equity, will have the rights and remedies set out below, which may be enforced successively or concurrently:

(xii) to appoint or reappoint by instrument in writing any person or persons, whether an officer or officers or employee or employees of the Bank or not, to be a receiver or receivers or a receiver and manager of the Collateral and remove or replace any person or persons so appointed or apply to any court for the appointment of a receiver or receiver and manager (each hereinafter called a "Receiver").

(b) Any Receiver so appointed shall be deemed to be the agent of the Grantor and not the Bank, and the Grantor and not the Bank, shall be solely responsible for the Receiver's acts or defaults and for the Receiver's remuneration and expenses. The Bank shall not be in any way responsible for any misconduct, negligence or failure to act on the part of any such Receiver, its servants, agents or employees.

(c) The Grantor agrees to pay all costs, charges and expenses incurred by the Bank or any Receiver appointed by the Bank, whether directly or for services rendered (including reasonable legal and auditors' costs and expenses and Receiver remuneration), in operating the Grantor's accounts, in preparing or enforcing this Agreement, taking and maintaining custody of, preserving, repairing, processing, preparing for disposition and disposing of Collateral and in enforcing or collecting the Obligations, and all such costs, charges and expenses, together with any amounts owing as a result of any borrowing by the Bank or any Receiver appointed by the Bank, as permitted hereby, shall be a first charge on the Collateral and shall be secured hereby.

39. The Respondent is in default of the terms of the Financing, and the Obligations are due and payable in full.
40. The provisions of the Bank's Security provide the Bank with the power to appoint a Receiver over all of the personal property of the Respondent as secured by the GSA.

The Real Property

41. The Standard Charge Terms grant the Bank the power to appoint a Receiver over the Real Property as a result of the Defaults, and state, in part:

8. Appointment of Receiver

If the Chargor shall be in default in the observance or performance of any of the terms, conditions, covenants or payments described herein or in any additional or collateral security given by the Chargor to the Bank then the Bank may in writing, appoint any person, whether an officer or employee of the Bank or not, to be a receiver of the Property and the rents and profits derived therefrom, and may remove the receiver so appointed and appoint another in his stead. The term "receiver" as used in this Charge includes a receiver and manager. The following provisions shall apply to this paragraph:

(a) The receiver so appointed is conclusively the agent of the Chargor and the Chargor shall be solely responsible for the acts or defaults and for the remuneration and expenses of the receiver. The Bank shall not be responsible in any way for any misconduct or negligence on the part of the receiver and may, from time to time, fix the remuneration of the receiver and be at liberty to direct the payment thereof from proceeds collected;

(b) Nothing contained herein and nothing done by the Bank or by the receiver shall render the Bank a mortgagee in possession or responsible as such;

(c) All monies received by the receiver, after providing for payment and charges ranking prior to this Charge and for all applicable Costs shall be applied in or towards satisfaction of the remaining Indebtedness;

(d) The receiver so appointed shall have power to:

(i) take possession of the Property, collect rents and profits and realize upon additional or collateral security granted by the Chargor to the Bank and for that purpose may take any proceedings, be they legal or otherwise, in the name of the Chargor or otherwise;

(ii) carry on or concur in carrying on the business which the Chargor is conducting on and from the Property and for that purpose may borrow money on the security of the Property in priority to this Charge; and

(iii) lease all or any portion of the Property and for this purpose execute contracts in the name of the Chargor which said contracts shall be binding upon the Chargor;

(e) The rights and powers conferred herein are supplemental to and not in substitution for any rights which the Bank may have from time to time.

42. The Debtor is in default of the Financing, and the loans advanced thereunder are due and payable in full. The Bank is entitled to seek the appointment of a Receiver over the property of the Debtor, including the Real Property as a result thereof, and the terms of the Mortgage, as governed by the Standard Charge Terms, provide the Bank with the power to appoint a Receiver over the Real Property.

The Bank's Position

43. The Debtor is in default of the Financing, which defaults continues. The terms of the Security authorize the Bank to appoint a Receiver over all property of the Debtor, including the Real Property, as a result of the Defaults.
44. The Obligations due pursuant to the Demands has not been paid. The Respondent is insolvent. All notice periods under the BIA have expired, and the Bank is unwilling to provide the Debtor with any further credit or with any forbearance.
45. The Bank is in a position to seek the order appointing the Receiver over the personal property of the Debtor and the Real Property, pursuant to the provisions of the GSA and the Mortgage, respectively.
46. The Appointment of a Receiver is necessary in order to complete a sale of the Real Property, and to apply the proceeds of such sale to the Debtor's obligations.
47. The Debtor has been unable to complete a sale or a refinancing, and has not advised of any sale or financing, despite significant time in which to do so.
48. The Bank is unaware whether the Real Property is being properly maintained. Absent the appointment of a Receiver, the state of the Real Property may degrade, which will negatively impact the value of the Bank's Security. The appointment of a Receiver is necessary to ensure that the Real Property is maintained until a sale can be arranged.
49. It is the Bank's position that the appointment of the Receiver is just and equitable and is necessary for the protection of the estate of the Debtor, and the interests of the Bank, as a secured creditor, and other stakeholders.

50. The Bank proposes that msi Spergel inc. (“**Spergel**”) be appointed as Receiver, without security, of the Real Property, as secured by the Mortgage, and over all personal property of the Debtor, as secured by the GSA.
51. Spergel has consented to act as Receiver should this Honourable Court so appoint it.
52. This affidavit is made in support of the within application for the appointment of Spergel as Receiver, without security, over all of the accounts and inventory of the Debtor, and for no other improper purpose.

Sworn or Affirmed before me: in person OR by video conference

by Rukshana Belliappa of the City of Toronto in the Province of Ontario, before me at the City of London in the Province of Ontario, on June 11, 2024 in accordance with [O. Reg. 431/20](#), Administering Oath or Declaration Remotely.

Commissioner for Taking Affidavits (*or as may be*)



Signature of Commissioner (or as may be)



RUKSHANA BELLIPPA

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

THE TORONTO-DOMINION BANK

Applicant

-and-

MALAKAND PETROLEUM INC.

Respondent

ATTACHED HERETO ARE EXHIBITS "A" TO "K"
AS REFERRED TO IN THE AFFIDAVIT OF RUKSHANA BELLIAPPA,
SWORN BEFORE ME BY VIDEOCONFERENCE JUNE 11, 2024.



A Commissioner, etc.

Exhibit “A”



Profile Report

MALAKAND PETROLEUM INC. as of November 22, 2023

| | |
|-----------------------------------|---|
| Act | Business Corporations Act |
| Type | Ontario Business Corporation |
| Name | MALAKAND PETROLEUM INC. |
| Ontario Corporation Number (OCN) | 2714393 |
| Governing Jurisdiction | Canada - Ontario |
| Status | Active |
| Date of Incorporation | September 03, 2019 |
| Registered or Head Office Address | 1228 Raspberry Terr, Milton, Ontario, Canada, L9E 1N1 |

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

V. Quintanilla W.

Director/Registrar

This report sets out the most recent information filed on or after June 27, 1992 in respect of corporations and April 1, 1994 in respect of Business Names Act and Limited Partnerships Act filings and recorded in the electronic records maintained by the Ministry as of the date and time the report is generated, unless the report is generated for a previous date. If this report is generated for a previous date, the report sets out the most recent information filed and recorded in the electronic records maintained by the Ministry up to the "as of" date indicated on the report. Additional historical information may exist in paper or microfiche format.

Active Director(s)

Minimum Number of Directors 1
Maximum Number of Directors 10

Name FAZLE MAJEED
Address for Service 1228 Raspberry, Milton, Ontario, Canada, L9E 1N1
Resident Canadian Yes
Date Began September 03, 2019

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

V. Quintanilla W.

Director/Registrar

This report sets out the most recent information filed on or after June 27, 1992 in respect of corporations and April 1, 1994 in respect of Business Names Act and Limited Partnerships Act filings and recorded in the electronic records maintained by the Ministry as of the date and time the report is generated, unless the report is generated for a previous date. If this report is generated for a previous date, the report sets out the most recent information filed and recorded in the electronic records maintained by the Ministry up to the "as of" date indicated on the report. Additional historical information may exist in paper or microfiche format.

Active Officer(s)

| | |
|----------------------------|--|
| Name | FAZLE MAJEED |
| Position | President |
| Address for Service | 1228 Raspberry Terrace, Milton, Ontario, Canada, L9E 1N1 |
| Date Began | September 03, 2019 |

| | |
|----------------------------|--|
| Name | FAZLE MAJEED |
| Position | Secretary |
| Address for Service | 1228 Raspberry Terrace, Milton, Ontario, Canada, L9E 1N1 |
| Date Began | September 03, 2019 |

| | |
|----------------------------|--|
| Name | ATTA UDDIN |
| Position | General Manager |
| Address for Service | 49 Hiberton Cres, Brampton, Ontario, Canada, L7A 3C9 |
| Date Began | September 03, 2019 |

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

V. Quintanilla W.

Director/Registrar

This report sets out the most recent information filed on or after June 27, 1992 in respect of corporations and April 1, 1994 in respect of Business Names Act and Limited Partnerships Act filings and recorded in the electronic records maintained by the Ministry as of the date and time the report is generated, unless the report is generated for a previous date. If this report is generated for a previous date, the report sets out the most recent information filed and recorded in the electronic records maintained by the Ministry up to the "as of" date indicated on the report. Additional historical information may exist in paper or microfiche format.

Corporate Name History

Name

MALAKAND PETROLEUM INC.

Effective Date

September 03, 2019

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

V. Quintanilla W.

Director/Registrar

This report sets out the most recent information filed on or after June 27, 1992 in respect of corporations and April 1, 1994 in respect of Business Names Act and Limited Partnerships Act filings and recorded in the electronic records maintained by the Ministry as of the date and time the report is generated, unless the report is generated for a previous date. If this report is generated for a previous date, the report sets out the most recent information filed and recorded in the electronic records maintained by the Ministry up to the "as of" date indicated on the report. Additional historical information may exist in paper or microfiche format.

Active Business Names

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

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

V. Quintanilla W.

Director/Registrar

This report sets out the most recent information filed on or after June 27, 1992 in respect of corporations and April 1, 1994 in respect of Business Names Act and Limited Partnerships Act filings and recorded in the electronic records maintained by the Ministry as of the date and time the report is generated, unless the report is generated for a previous date. If this report is generated for a previous date, the report sets out the most recent information filed and recorded in the electronic records maintained by the Ministry up to the "as of" date indicated on the report. Additional historical information may exist in paper or microfiche format.

Expired or Cancelled Business Names

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

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

V. Quintanilla W.

Director/Registrar

This report sets out the most recent information filed on or after June 27, 1992 in respect of corporations and April 1, 1994 in respect of Business Names Act and Limited Partnerships Act filings and recorded in the electronic records maintained by the Ministry as of the date and time the report is generated, unless the report is generated for a previous date. If this report is generated for a previous date, the report sets out the most recent information filed and recorded in the electronic records maintained by the Ministry up to the "as of" date indicated on the report. Additional historical information may exist in paper or microfiche format.

Document List

| Filing Name | Effective Date |
|--|--------------------|
| CIA - Notice of Change PAF: Fazle MAJEED | July 04, 2022 |
| Annual Return - 2020 PAF: FAZAL MAJEED - DIRECTOR | May 16, 2021 |
| CIA - Initial Return PAF: FAZLE MAJEED - DIRECTOR | September 03, 2019 |
| BCA - Articles of Incorporation | September 03, 2019 |

All "PAF" (person authorizing filing) information is displayed exactly as recorded in the Ontario Business Registry. Where PAF is not shown against a document, the information has not been recorded in the Ontario Business Registry.

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

V. Quintanilla W.

Director/Registrar

This report sets out the most recent information filed on or after June 27, 1992 in respect of corporations and April 1, 1994 in respect of Business Names Act and Limited Partnerships Act filings and recorded in the electronic records maintained by the Ministry as of the date and time the report is generated, unless the report is generated for a previous date. If this report is generated for a previous date, the report sets out the most recent information filed and recorded in the electronic records maintained by the Ministry up to the "as of" date indicated on the report. Additional historical information may exist in paper or microfiche format.

Exhibit “B”

LAND
REGISTRY
OFFICE #20

24992-0323 (LT)

PAGE 1 OF 1
PREPARED FOR ATingey01
ON 2024/05/28 AT 13:36:57

* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT * SUBJECT TO RESERVATIONS IN CROWN GRANT *

PROPERTY DESCRIPTION: LT 5, PL 438; PT LT 6, PL 438, AS IN 515429; ALSO SHOWN ON PL 1098; TOWN OF HALTON HILLS

PROPERTY REMARKS: CORRECTION: INSTRUMENT NUMBER PL603 WAS ENTERED IN ERROR AGAINST THIS PROPERTY AND WAS REMOVED AND CERTIFIED ON 1999/11/02 BY DEPUTY.

ESTATE/QUALIFIER:
FEE SIMPLE
LT CONVERSION QUALIFIED

RECENTLY:
FIRST CONVERSION FROM BOOK

PIN CREATION DATE:
1996/10/28

OWNERS' NAMES
MALAKAND PETROLEUM INC.

CAPACITY SHARE
ROWN

| REG. NUM. | DATE | INSTRUMENT TYPE | AMOUNT | PARTIES FROM | PARTIES TO | CERT/CHKD |
|--|------------|--------------------|-------------|---|---------------------------|-----------|
| <p>**EFFECTIVE 2000/07/29 THE NOTATION OF THE "BLOCK IMPLEMENTATION DATE" OF 1996/10/28 ON THIS PIN**</p> <p>**WAS REPLACED WITH THE "PIN CREATION DATE" OF 1996/10/28**</p> <p>** PRINTOUT INCLUDES ALL DOCUMENT TYPES (DELETED INSTRUMENTS NOT INCLUDED) **</p> <p>**SUBJECT, ON FIRST REGISTRATION UNDER THE LAND TITLES ACT, TO:</p> <p>** SUBSECTION 44(1) OF THE LAND TITLES ACT, EXCEPT PARAGRAPH 11, PARAGRAPH 14, PROVINCIAL SUCCESSION DUTIES * AND ESCHEATS OR FORFEITURE TO THE CROWN.</p> <p>** THE RIGHTS OF ANY PERSON WHO WOULD, BUT FOR THE LAND TITLES ACT, BE ENTITLED TO THE LAND OR ANY PART OF IT THROUGH LENGTH OF ADVERSE POSSESSION, PRESCRIPTION, MISDESCRIPTION OR BOUNDARIES SETTLED BY CONVENTION.</p> <p>** ANY LEASE TO WHICH THE SUBSECTION 70(2) OF THE REGISTRY ACT APPLIES.</p> <p>**DATE OF CONVERSION TO LAND TITLES: 1996/10/28 **</p> | | | | | | |
| PL1098 | 1961/05/29 | PLAN MISCELLANEOUS | | | | C |
| HR1478899 | 2017/08/08 | NOTICE | | THE CORPORATION OF THE TOWN OF HALTON HILLS | | C |
| REMARKS: THIS NOTICE IS FOR AN INDETERMINATE PERIOD | | | | | | |
| HR1670510 | 2019/12/05 | TRANSFER | \$1,700,000 | GLOBAL REALTY INC. | MALAKAND PETROLEUM INC. | C |
| HR1907865 | 2022/07/18 | CHARGE | \$2,300,000 | MALAKAND PETROLEUM INC. | THE TORONTO-DOMINION BANK | C |
| HR1907866 | 2022/07/18 | NO ASSGN RENT GEN | | MALAKAND PETROLEUM INC. | THE TORONTO-DOMINION BANK | C |
| REMARKS: HR1907865 | | | | | | |
| HR1954371 | 2023/03/21 | CHARGE | \$167,000 | MALAKAND PETROLEUM INC. | TT3 INC. | C |
| HR1954372 | 2023/03/21 | NO ASSGN RENT GEN | | MALAKAND PETROLEUM INC. | TT3 INC. | C |
| REMARKS: HR1954371 | | | | | | |

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

Exhibit “C”



Mississauga Commercial Banking Center
20 Milverton Dr & Hwy 10
Mississauga, ON
L5R 3G2
Telephone No.: (416) 259 9822
Fax No.: (905) 259 9293

June 27, 2022

MALAKAND PETROLEUM INC.

Attention: Fazle Majeed

LETTER OF AGREEMENT

We are pleased to offer the Borrower the following credit facilities (the "Facilities"), subject to the following terms and conditions.

BORROWER

MALAKAND PETROLEUM INC. (the "Borrower")

LENDER

The Toronto-Dominion Bank (the "Bank"), through its Mississauga Commercial Banking Center branch, in Mississauga, ON.

CREDIT LIMIT

- 1) CAD\$2,200,000 as reduced pursuant to the section headed "Repayment and Reduction of Amount of Credit Facility".
- 2) CAD \$75,000

TYPE OF CREDIT AND BORROWING OPTIONS

- 1) **Committed Reducing Term Facility (Single Draw)** available at the Borrower's option by way of:
 - Fixed Rate Term Loan in CAD\$
 - Floating Rate Term Loan available by way of:
 - Prime Rate Based Loans in CAD\$ ("Prime Based Loans")
- 2) **Operating Loan** available at the Borrower's option by way of:

- Prime Rate Based Loans in CAD\$ ("Prime Based Loans")

PURPOSE

- 1) To provide mortgage financing for property located at 12 Guelph St W, Acton Ontario.
- 2) For working capital purposes

TENOR

- 1) Committed
- 2) Uncommitted

**CONTRACTUAL
TERM**

- 1) 60 Months from the Date of the drawdown.
- 2) No term

**RATE TERM
(FIXED RATE
TERM LOAN)**

- 1) Fixed rate: 6 month, 12-60 months but never to exceed the Contractual Term Maturity Date
- 1) Floating rate: No term

AMORTIZATION

- 1) 180 months

INTEREST RATES AND FEES

Advances shall bear interest and fees as follows:

- 1) **Committed Reducing Term Facility:**
 - Fixed Rate Term Loans: as determined by the Bank, in its sole discretion, for the Rate Term - selected by the Borrower, and as set out in the Rate and Payment Terms Notice applicable to that Fixed Rate Term Loan.
 - Floating Rate Term Loans available by way of:
 - Prime Based Loans: Prime Rate + 1.500% per annum
- 2) **Operating Loan:**
 - Prime Based Loans: Prime Rate + 1.500% per annum

For all Facilities, interest payments will be made in accordance with Schedule "A" attached hereto unless otherwise stated in this Letter or in the Rate and Payment Terms Notice applicable for a particular drawdown. Information on interest rate and fee definitions, interest rate calculations and payment is set out in the Schedule "A" attached hereto.

Interest on Fixed Rate Term Loans under Facility 1 is compounded Semi-Annually and payable monthly arrears.

**ARRANGEMENT
FEE**

The Borrower has paid or will pay prior to any drawdown hereunder a non-refundable arrangement fee of CAD\$8,000.

**ADMINISTRATION
FEE**

CAD\$100 per month.

RENEWAL FEE

CAD\$2,000 per annum.

EXCESS MONITORING FEE

The Borrower shall pay, unless waived by the Bank in the Bank's sole discretion, an Excess Monitoring Fee of \$250.00, payable in the currency of the Facility, each time that the Credit Limit of a Facility is exceeded. Any extension of credit above the Credit Limit will be at the Bank's sole and absolute discretion.

LATE REPORTING FEE

The Borrower shall pay, unless waived by the Bank in the Bank's sole discretion, a Late Reporting Fee of \$250.00 per occurrence, and monthly thereafter until reporting is provided to the Bank, each time financial reporting is not provided within the timelines established in the Positive Covenants and Reporting Covenants.

DISCHARGE FEE

The Borrower shall pay, unless waived by the Bank in the Bank's sole discretion, a Discharge Fee of \$250.00 per collateral charge to prepare the documents needed to register the discharge of any collateral charge under the Bank Security, in addition to the applicable government fee(s) for registering each discharge.

DRAWDOWN

| Assigned Facilities | Description |
|----------------------------|---|
| 1) | One-time drawdown subject to satisfaction of Conditions Precedent |
| 2) | On a revolving basis. Amounts repaid may be redrawn up to the Credit Limit as reduced pursuant to the heading Repayment and Reduction of Amount of Credit Facility. |

Each drawdown under 1 will be a "tranche" and each tranche will bear its own interest rate and repayment terms

as set out in the Rate and Payment Terms Notice delivered by the Bank to the Borrower in respect of that drawdown.

Notice periods, minimum amounts of draws, interest periods and contract maturity for LIBOR Loans, terms for Banker's Acceptances and other similar details are set out in the Schedule "A" attached hereto.

OVERDRAFTS

The Borrower will have access to Prime Based Loans under the Operating Loan via overdraft from Account Number 5354996 at Branch 1275 (the "Account") up to the Credit Limit.

REPAYMENT AND REDUCTION OF AMOUNT OF CREDIT FACILITY

| Assigned Facilities | Description |
|----------------------------|---|
| 1) | All amounts outstanding will be repaid on or before the Contractual Term Maturity Date. The drawdown will be repaid in equal monthly payments. The details of repayment and interest rate applicable to such drawdown will be set out in the "Rate and Payment Terms Notice" applicable to that drawdown. Any amounts repaid may not be reborrowed. |
| 1) | Mortgage Term Loan: Equal monthly, payments of principal and interest over 180 months. |
| 2) | On demand |

PREPAYMENT

| Assigned Facilities | Description |
|----------------------------|---|
| 1) | The Borrower has selected the 10% Prepayment Option and accordingly, Fixed Rate Term Loans under this Facility may be prepaid in accordance with Section 4a) and 4b) of Schedule A. |

SECURITY

The following security shall be provided, shall, unless otherwise indicated, support all present and future indebtedness and liability of the Borrower and the grantor of the security to the Bank including without limitation indebtedness and liability under guarantees, foreign exchange contracts, cash management products, and derivative contracts, shall be registered in first position, and shall be on the Bank's standard form, supported by resolutions and solicitor's opinion, all acceptable to the Bank.

- a) General Security Agreement ("GSA") issued by Malakand Petroleum Inc. representing a first charge on all the present and after acquired personal property of Malakand Petroleum Inc. – To Be obtained
- b) Continuing Collateral Mortgage, representing a First charge, on real property located at 12 Guelph St W, Halton Hills, Ontario in the principal amount of CAD \$2,300,000, beneficially owned by and registered in the name of MALAKAND PETROLEUM INC. - To Be Obtained
- c) Postponement and Assignment of Creditor's Claim executed by FAZLE MAJEED in the amount satisfactory to the Bank. - To Be Obtained
- d) Environmental Indemnity Agreement (or Environmental Indemnity and Warranty Agreement) - To Be Obtained
- e) Assignment of Fire Insurance in an amount satisfactory to The Bank. Issued by Malakand Petroleum Inc. - To Be Obtained

- f) Business Insurance in the Amount satisfactory to The Bank. Issued by Malakand Petroleum Inc.
- g) Guarantee of Advances (Unlimited Personal) issued by Fazle Majeed in support of Malakand Petroleum Inc.

All persons and entities required to provide a guarantee shall be referred to in this Agreement individually as a "Surety" and/or "Guarantor" and collectively as the "Guarantors";

All of the above security and guarantees shall be referred to collectively in this Agreement as "Bank Security".

DISBURSEMENT CONDITIONS

The obligation of the Bank to permit any drawdown hereunder is subject to the Standard Disbursement Conditions contained in Schedule "A" and the following additional drawdown conditions:

Delivery to the Bank of the following, all of which must be satisfactory to the Bank:

| Assigned Facilities | Description |
|----------------------------|--|
| All) | Confirmation that the current Fuel Supply Agreement with Global Fuels is in good standing (ie. An amendment to the Fuel Supply Agreement to bring the minimum per annum fuel spend in line with actuals or Formal waiver from Global Fuels). Such confirmation to be found satisfactory by the Bank. |
| All) | Deposit accounts to be established with TD Bank (with post-closing undertaking to fully migrate within 60 days) |
| All) | Letter of transmittal satisfactory to The Bank for Phase II Environmental Site Assessment from Rubicon Environmental dated April 22nd, 2022 |
| All) | RBC Mortgage Payout Statement to be provided |
| All) | Receipt of Reliance letter addressed to TD regarding RIDLEY & ASSOCIATES APPRAISAL SERVICES LIMITED appraisal of subject property dated May 14th, 2022 |
| All) | Review of fire insurance in an amount deemed sufficient by the Bank |
| All) | Satisfactory loan documentation, including all documentation to satisfy the Bank's regulatory requirements (KYC/AML), credit agreement, security, legal opinions, etc., in form and substance satisfactory to the Lender and its counsel |
| All) | Year to date Interim accountant prepared Financial Statements confirming Debt Service Covenant compliance on a pro forma basis (based on annualized EBITDA). |

REPRESENTATIONS AND WARRANTIES

All representations and warranties shall be deemed to be continually repeated so long as any amounts remain outstanding and unpaid under this Agreement or so long as any commitment under this Agreement remains in effect. The Borrower makes the Standard Representations and Warranties set out in Schedule "A".

POSITIVE COVENANTS

So long as any amounts remain outstanding and unpaid under this Agreement or so long as any commitment under this Agreement remains in effect, the Borrower will and will ensure that its subsidiaries and each of the Guarantors will observe the Standard Positive Covenants set out in Schedule "A" and in addition will:

- a) All Bank accounts through which funds will flow to be domiciled with TD Bank
- b) Agreement to immediately inform the Bank of any equipment failure with environmental impact which may require repair and/or remediation
- c) Provide evidence of renewal/extension of all Material Contracts or Licenses, including without being limited to ESSO, TSSA

REPORTING COVENANTS

- a) Annual notice to reader financial statements for Malakand Petroleum within 120 calendar days of fiscal year end
- b) Provide confirmation to the Bank on an annual basis within 120 calendar days of fiscal year end that taxes are current, such confirmation to be in a format acceptable to the Bank
- c) Annual confirmation of insurance policy to be 'in force', and coverage deemed adequate by the Bank within 120 calendar days of fiscal year end.
- d) Renewed Ontario Fuel Safety License provided by TSSA within 120 calendar days of fiscal year end.
- e) Personal Net Worth Statements for the guarantor at the request of the Bank or minimum every 3 years

NEGATIVE COVENANTS

So long as any amounts remain outstanding and unpaid under this Agreement or so long as any commitment under this Agreement remains in effect, the Borrower will and will ensure that its subsidiaries and each of the Guarantors will observe the Standard Negative Covenants set out in Schedule "A".

- a) No further encumbrances on the subject property without the Bank's prior written Consent
- b) No change of control / ownership, re-organization

PERMITTED LIENS

Permitted Liens as referred to in Schedule "A" are:

| Assigned Facilities | Description |
|----------------------------|--|
| 1) | No subsequent encumbrances shall be permitted without the prior written consent of the Bank. |

FINANCIAL COVENANTS

The Borrower agrees at all times to:

| Assigned Facilities | Description |
|----------------------------|---|
| | Minimum Debt Service Coverage Ratio ("DSC") $\geq 1.20x$ |
| | DSC Ratio is defined as: $EBITDA^* - \text{Unfinanced Capex}^{**} - \text{Distributions}^{***} / \text{Principal} + \text{Interest}$ |
| | *EBITDA is defined as Earnings before Interest, Depreciation, and Amortization |
| All) | **Unfinanced Capex is defined as total capital expenditures less proceeds on the disposal of capital assets and less new funded loans |
| | ***Distributions is defined as dividends plus repayment of shareholder loans plus repayment of related party loans plus loans advanced plus share redemptions. Inflows may be netted against outflows or capital expenditures, but the net sum of distributions and capital expenditures may not exceed zero. |

EVENTS OF DEFAULT

The Bank may accelerate the payment of principal and interest under any committed credit facility hereunder and cancel any undrawn portion of any committed credit facility hereunder, at any time after the occurrence of any one of the Standard Events of Default contained in Schedule "A" attached hereto and after any one of the following additional Events of Default:

| Assigned Facilities | Description |
|----------------------------|---|
| 1) | Expiry or cancellation of TSSA License or any other certification required to operate a gas station |
| 1) | Non-renewal of the fuel supplier contract and other material change in operations. |

ANCILLARY FACILITIES

As at the date of this Agreement, the following uncommitted ancillary products are made available. These products may be subject to other agreements.

- 1) TD Visa Business card (or cards) for an aggregate amount of \$10,000.

AVAILABILITY OF OPERATING LOAN

The Operating Loan is uncommitted, made available at the Bank's discretion, and is not automatically available upon satisfaction of the terms and conditions, conditions precedent, or financial tests set out herein.

The occurrence of an Event of Default is not a precondition to the Bank's right to accelerate repayment and cancel the availability of the Operating Loan.

SCHEDULE "A" - STANDARD TERMS AND CONDITIONS

Schedule "A" sets out the Standard Terms and Conditions ("Standard Terms and Conditions") which apply to these credit facilities. The Standard Terms and Conditions, including the defined terms set out therein, form part of this Agreement, unless this letter states specifically that one or more of the Standard Terms and Conditions do not apply or are modified.

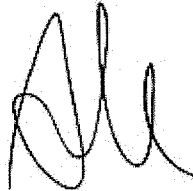
We trust you will find these facilities helpful in meeting your ongoing financing requirements. We ask that if you wish to accept this offer of financing (which includes the Standard Terms and Conditions), please do so by signing and returning the attached duplicate copy of this letter to the undersigned. This offer will expire if not accepted in writing and received by the Bank on or before June, 30th, 2022.

Yours truly,

THE TORONTO-DOMINION BANK



Benjamin Ng
Relationship Manager



Andrew Quercia
Manager of Commercial Credit

TO THE TORONTO-DOMINION BANK:

MALAKAND PETROLEUM INC. hereby accepts the foregoing offer this 28 day of JUNE, 2022.
The Borrower confirms that, except as may be set out above, the credit facility(ies) detailed herein shall not be used by or on behalf of any third party.



Signature

FAZLE MAJEED

Print Name & Position

cc. Guarantor(s)

The Bank is providing the guarantor(s) with a copy of this letter as a courtesy only. The delivery of a copy of this letter does not create any obligation of the Bank to provide the guarantor(s) with notice of any changes to the credit facilities, including without limitation, changes to the terms and conditions, increases or decreases in the amount of the credit facilities, the establishment of new credit facilities or otherwise. The Bank may, or may not, at its option, provide the guarantor(s) with such information, provided that the Bank will provide such information upon the written request of the guarantor.

SCHEDULE "A" - STANDARD TERMS AND CONDITIONS

1. INTEREST RATE DEFINITIONS

Prime Rate means the rate of interest per annum (based on a 365 day year) established and reported by the Bank to the Bank of Canada from time to time as the reference rate of interest for determination of interest rates that the Bank charges to customers of varying degrees of creditworthiness in Canada for Canadian dollar loans made by it in Canada.

The Stamping Fee rate per annum for CAD B/As is based on a 365 day year and the Stamping Fee is calculated on the Face Amount of each B/A presented to the Bank for acceptance. The Stamping Fee rate per annum for USD B/As is based on a 360 day year and the Stamping Fee is calculated on the Face Amount of each B/A presented to the Bank for acceptance.

CDOR means, for any day, the annual rate for B/As denominated in Canadian Dollars for a specified term that appears on the Reuters Screen CDOR Page as of 10:00 a.m. (Toronto time) on such day (or, if such day is not a Business Day, then on the immediately preceding Business Day).

LIBOR means the rate of interest per annum (based on a 360 day year) as determined by the Bank (rounded upwards, if necessary to the nearest whole multiple of 1/16th of 1%) at which the Bank may make available United States dollars which are obtained by the Bank in the Interbank Euro Currency Market, London, England at approximately 11:00 a.m. (Toronto time) on the second Business Day before the first day of, and in an amount similar to, and for the period similar to the interest period of, such advance.

USBR means the rate of interest per annum (based on a 365 day year) established by the Bank from time to time as the reference rate of interest for the determination of interest rates that the Bank charges to customers of varying degrees of creditworthiness for US dollar loans made by it in Canada.

Interest rates will never be less than zero. If Prime Rate, CDOR, LIBOR, USBR or any other applicable base rate changes, resulting in a variable or floating annual interest rate that is a negative number, the interest rate will be 0.00%. Notwithstanding the foregoing, if a Floating Rate Loan with an interest rate based on CDOR or LIBOR has been hedged in its entirety with an interest rate swap with the Bank (the "Swap") and the Swap does not include a negative interest rate floor, the foregoing restriction on CDOR or LIBOR never being less than 0.00% shall not apply. However, for purposes of certainty, if the Swap is subsequently terminated or novated the restriction on CDOR or LIBOR never being less than 0.00% shall apply.

Any interest rate based on a period less than a year expressed as an annual rate for the purposes of the Interest Act (Canada) is equivalent to such determined rate multiplied by the actual number of days in the calendar year in which the same is to be ascertained and divided by the number of days in the period upon which it was based.

2. INTEREST CALCULATION AND PAYMENT

Interest on Prime Based Loans and USBR Loans is calculated daily (including February 29 in a leap year) and payable monthly in arrears based on the number of days the subject loan is outstanding unless otherwise provided in the Rate and Payment Terms Notice. Interest is charged on February 29 in a leap year.

The Stamping Fee is calculated based on the amount and the term of the B/A and is payable upon acceptance by the Bank of the B/A. The net proceeds received by the Borrower on a B/A advance will be equal to the Face Amount of the B/A discounted at the Bank's then prevailing B/A discount rate for CAD B/As or USD B/As as the case may be, for the specified term of the B/A less the B/A Stamping Fee. If the B/A discount rate (or the rate used to determine the B/A discount rate) is less than zero, it shall instead be deemed to be zero for purposes of this Agreement.

Interest on LIBOR Loans and CDOR Loans is calculated and payable on the earlier of contract maturity or quarterly in arrears, for the number of days in the LIBOR or CDOR interest period, as applicable.

L/C and L/G fees are payable at the time set out in the Letter of Credit Indemnity Agreement applicable to the issued L/C or L/G.

Interest on Fixed Rate Term Loans is compounded monthly and payable monthly in arrears unless otherwise provided in the Rate and Payment Terms Notice.

Interest is payable both before and after maturity or demand, default and judgment.

Each payment under this Agreement shall be applied first in payment of costs and expenses, then interest and fees and the balance, if any, shall be applied in reduction of principal.

For loans not secured by real property, all overdue amounts of principal and interest and all amounts outstanding in excess of the Credit Limit shall bear interest from the date on which the same became due or from when the excess was incurred, as the case may be, until the date of payment or until the date the excess is repaid at the Bank's standard rate charged from time to time for overdrafts, or such lower interest rate if the Bank agrees to a lower interest rate in writing. Nothing in this clause shall be deemed to authorize the Borrower to incur loans in excess of the Credit Limit.

If any provision of this Agreement would oblige the Borrower to make any payment of interest or other amount payable to the Bank in an amount or calculated at a rate which would be prohibited by law or would result in a receipt by the Bank of "interest" at a "criminal rate" (as such terms are construed under the Criminal Code (Canada)), then, notwithstanding such provision, such amount or rate shall be deemed to have been adjusted with retroactive effect to the maximum amount or rate of interest, as the case may be, as would not be so prohibited by applicable law or so result in a receipt by the Bank of "interest" at a "criminal rate", such adjustment to be effected, to the extent necessary (but only to the extent necessary), as follows: first, by reducing the amount or rate of interest, and, thereafter, by reducing any fees, commissions, costs, expenses, premiums and other amounts required to be paid to the Bank which would constitute interest for purposes of section 347 of the Criminal Code (Canada).

3. DRAWDOWN PROVISIONS

Prime Based and USBR Loans

There is no minimum amount of drawdown by way of Prime Based Loans and USBR Loans, except as stated in this Agreement. The Borrower shall provide the Bank with 3 Business Days' notice of a requested Prime Based Loan or USBR Loan over \$1,000,000.

B/As

The Borrower shall advise the Bank of the requested term or maturity date for B/As issued hereunder. The Bank shall have the discretion to restrict the term or maturity dates of B/As. In no event shall the term of the B/A exceed the Contractual Term Maturity Date or Maturity Date, as applicable. Except as otherwise stated in this Agreement, the minimum amount of a drawdown by way of B/As is \$1,000,000 and in multiples of \$100,000 thereafter. The Borrower shall provide the Bank with 3 Business Days' notice of a requested B/A drawdown.

The Borrower shall pay to the Bank the full amount of the B/A at the maturity date of the B/A.

The Borrower appoints the Bank as its attorney to and authorizes the Bank to (i) complete, sign, endorse, negotiate and deliver B/As on behalf of the Borrower in handwritten form, or by facsimile or mechanical signature or otherwise, (ii) accept such B/As, and (iii) purchase, discount, and/or negotiate B/As.

LIBOR and CDOR

The Borrower shall advise the Bank of the requested LIBOR or CDOR contract maturity or interest period. The Bank shall have the discretion to restrict the LIBOR or CDOR contract maturity. In no event shall the term of the LIBOR or CDOR contract exceed the Contractual Term Maturity Date or Maturity Date, as applicable. Except as otherwise stated in this Agreement, the minimum amount of a drawdown by way of a LIBOR Loan or a CDOR Loan is \$1,000,000, and shall be in multiples of \$100,000 thereafter. The Borrower will provide the Bank with 3 Business Days' notice of a requested LIBOR Loan or CDOR Loan.

L/C and/or L/G

The Bank shall have the discretion to restrict the maturity date of L/Gs or L/Cs.

B/A, LIBOR and CDOR - Conversion

Any portion of any B/A, LIBOR or CDOR Loan that is not repaid, rolled over or converted in accordance with the applicable notice requirements hereunder shall be converted by the Bank to a Prime Based Loan effective as of the maturity date of the B/A or the last day in the interest period of the LIBOR or CDOR contract, as applicable. The Bank may charge interest on the amount of the Prime Based Loan at the rate of 115% of the rate applicable to Prime Based Loans for the 3 Business Day period immediately following such maturity. Thereafter, the rate shall revert to the rate applicable to Prime Based Loans.

B/A, LIBOR and CDOR – Market Disruption

If the Bank determines, in its sole discretion, that a normal market in Canada for the purchase and sale of B/As or the making of CDOR or LIBOR Loans does not exist, any right of the Borrower to request a drawdown under the applicable borrowing option shall be suspended until the Bank advises otherwise. Any drawdown request for B/As, LIBOR or CDOR Loans, as applicable, during the suspension period shall be deemed to be a drawdown notice requesting a Prime Based Loan in an equivalent amount.

LIBOR Discontinuation

On the earliest of:

- (a) the date that the administrator of LIBOR has permanently or indefinitely ceased to make LIBOR available;
- (b) the governmental authority having jurisdiction over the administrator of LIBOR has made a public statement or publication of information announcing LIBOR is no longer representative; and
- (c) the Early Opt-in Effective Date,

the LIBOR Successor Rate will replace LIBOR for all purposes hereunder and under any other documents (other than any swap agreement, but including any other Bank Security) required in connection herewith, in respect of any interest period and contract maturity of such benchmark on such day and all subsequent interest periods and contract maturities without any amendment to, or further action or consent of any party to this Agreement. If the LIBOR Successor Rate is Daily Simple SOFR, all interest payments will be payable on a monthly basis unless otherwise agreed by the Bank. Notwithstanding anything else herein, any definition of the LIBOR Successor Rate (exclusive of any margin) shall provide that in no event shall such LIBOR Successor Rate be less than zero for the purposes of this Agreement.

The Bank does not warrant or accept any responsibility for, and shall not have any liability with respect to, the administration, submission or any other matter related to LIBOR or the LIBOR Successor Rate including without limitation, whether the composition or characteristics of the LIBOR Successor Rate, will be similar to, or produce the same value or economic equivalence of, LIBOR or have the same volume or liquidity as did LIBOR prior to its discontinuance or unavailability.

In connection with the implementation and administration of the LIBOR Successor Rate, the Bank will have the right to make LIBOR Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary in this Agreement or in any Bank Security or other document provided in connection herewith, any amendments implementing such LIBOR Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement.

The Bank will promptly notify the Borrower of (i) the occurrence of an Early Opt-in Election, (ii) the implementation of the LIBOR Successor Rate and (iii) the effectiveness of any LIBOR Replacement Conforming Changes. Any determination, decision or election that may be made by the Bank pursuant to this Section, including any determination with respect to a interest period, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action, will be conclusive and binding absent manifest error and may be made in its sole discretion and without consent from any other party hereto, except, in each case, as expressly required pursuant to this Section.

Cash Management

The Bank may, and the Borrower hereby authorizes the Bank to, drawdown under the Operating Loan or Farm Property Line of Credit to satisfy any obligations of the Borrower to the Bank in connection with any cash management service provided by the Bank to the Borrower. The Bank may drawdown under the Operating Loan or Farm Property Line of Credit even if the drawdown results in amounts outstanding in excess of the Credit Limit.

Notice

Prior to each drawdown under a Fixed Rate Term Loan, other than a Long Term Farm Loan, an Agriculture Term Loan, a Canadian Agricultural Loans Act Loan, a Dairy Term Loan or a Poultry Term Loan and at least 10 days prior to the maturity of each Rate Term, the Borrower will advise the Bank of its selection of drawdown options from those made available by the Bank. The Bank will, after each drawdown, other than drawdowns by way of BA, CDOR, or LIBOR Loan or under the operating loan, send a Rate and Payment Terms Notice to the Borrower.

4. PREPAYMENT

Fixed Rate Term Loans

10% Prepayment Option Chosen.

- (a) Once, each calendar year, ("Year"), the Borrower may, provided that an Event of Default has not occurred, prepay in one lump sum, an amount of principal outstanding under a Fixed Rate Term Loan not exceeding 10% of the original amount of the Fixed Rate Term Loan, upon payment of all interest accrued to the date of prepayment without paying any prepayment charge. If the prepayment privilege is not used in one Year, it cannot be carried forward and used in a later Year.
- (b) Provided that an Event of Default has not occurred, the Borrower may prepay more than 10% of the original amount of a Fixed Rate Term Loan in any Year, upon payment of all interest accrued to the date of prepayment and an amount equal to the greater of:
 - i) three months' interest on the amount of the prepayment (the amount of prepayment is the amount of prepayment exceeding the 10% limit described in Section 4(a)) using the interest rate applicable to the Fixed Rate Term Loan being prepaid; and
 - ii) the Yield Maintenance, being the difference between:
 - a. the current outstanding principal balance of the Fixed Rate Term Loan; and
 - b. the sum of the present values as of the date of the prepayment of the future payments to be made on the Fixed Rate Term Loan until the last day of a Rate Term, plus the present value of the principal amount of the Fixed Rate Term Loan that would have been due on the maturity of the Rate Term, when discounted at the Government of Canada bond yield rate with a term which has the closest maturity to the unexpired term of the Fixed Rate Term Loan.

10% Prepayment Option Not Chosen.

- (c) The Borrower may, provided that an Event of Default has not occurred, prepay all or any part of the principal then outstanding under a Fixed Rate Term Loan upon payment of all interest accrued to the date of prepayment and an amount equal to the greater of:
 - i) three months' interest on the amount of the prepayment using the interest rate applicable to the Fixed Rate Term Loan being prepaid; and
 - ii) the Yield Maintenance, being the difference between:
 - a. the current outstanding principal balance of the Fixed Rate Term Loan; and
 - b. the sum of the present values as of the date of the prepayment of the future payments to be made on the Fixed Rate Term Loan until the last day of the Rate Term, plus the present value of the principal amount of the Fixed Rate Term Loan that would have been due on the maturity of the Rate Term when discounted at the Government of Canada bond yield rate with a term which has the closest maturity to the unexpired term of the Fixed Rate Term Loan.

Floating Rate Term Loans

The Borrower may prepay the whole or any part of the principal outstanding under a Floating Rate Term Loan, at any time without the payment of prepayment charges.

5. STANDARD DISBURSEMENT CONDITIONS

The obligation of the Bank to permit any drawdowns hereunder at any time is subject to the following conditions precedent:

- a) The Bank shall have received the following documents which shall be in form and substance satisfactory to the Bank:
 - i) A copy of a duly executed resolution of the Board of Directors of the Borrower empowering the Borrower to enter into this Agreement;
 - ii) A copy of any necessary government approvals authorizing the Borrower to enter into this Agreement;
 - iii) All of the Bank Security and supporting resolutions and solicitors' letter of opinion required hereunder;
 - iv) The Borrower's compliance certificate certifying compliance with all terms and conditions hereunder;
 - v) All operation of account documentation; and
 - vi) For drawdowns under the Facility by way of L/C or L/G, the Bank's standard form Letter of Credit Indemnity Agreement
- b) The representations and warranties contained in this Agreement are correct.
- c) No event has occurred and is continuing which constitutes an Event of Default or would constitute an Event of Default, but for the requirement that notice be given or time elapse or both.
- d) The Bank has received the arrangement fee payable hereunder (if any) and the Borrower has paid all legal and other expenses incurred by the Bank in connection with the Agreement or the Bank Security.

6. STANDARD REPRESENTATIONS AND WARRANTIES

The Borrower hereby represents and warrants, which representations and warranties shall be deemed to be continually repeated so long as any amounts remain outstanding and unpaid under this Agreement or so long as any commitment under this Agreement remains in effect, that:

- a) The Borrower is a duly incorporated corporation, a limited partnership, partnership, or sole proprietorship, duly organized, validly existing and in good standing under the laws of the jurisdiction where the Branch/Centre is located and each other jurisdiction where the Borrower has property or assets or carries on business and the Borrower has adequate corporate power and authority to carry on its business, own property, borrow monies and enter into agreements therefore, execute and deliver the Agreement, the Bank Security, and documents required hereunder, and observe and perform the terms and provisions of this Agreement.
- b) There are no laws, statutes or regulations applicable to or binding upon the Borrower and no provisions in its charter documents or in any by-laws, resolutions, contracts, agreements, or arrangements which would be contravened, breached, violated as a result of the execution, delivery, performance, observance, of any terms of this Agreement.
- c) No Event of Default has occurred nor has any event occurred which, with the passage of time or the giving of notice, would constitute an Event of Default under this Agreement or which would constitute a default under any other agreement.
- d) There are no actions, suits or proceedings, including appeals or applications for review, or any knowledge of pending actions, suits, or proceedings against the Borrower and its subsidiaries, before any court or administrative agency which would result in any material adverse change in the property, assets, financial condition, business or operations of the Borrower.
- e) All material authorizations, approvals, consents, licenses, exemptions, filings, registrations and other requirements of governmental, judicial and public bodies and authorities required to carry on its business have been or will be obtained or effected and are or will be in full force and effect.

- f) The financial statements and forecasts delivered to the Bank fairly present the present financial position of the Borrower, and have been prepared by the Borrower and its auditors in accordance with the International Financial Reporting Standards or GAAP for Private Enterprises.
- g) All of the remittances required to be made by the Borrower to the federal government and all provincial and municipal governments have been made, are currently up to date and there are no outstanding arrears. Without limiting the foregoing, all employee source deductions (including income taxes, Employment Insurance and Canada Pension Plan), sales taxes (both provincial and federal), corporate income taxes, corporate capital taxes, payroll taxes and workers' compensation dues are currently paid and up to date.
- h) If the Bank Security includes a charge on real property, the Borrower or Guarantor, as applicable, is the legal and beneficial owner of the real property with good and marketable title in fee simple thereto, free from all easements, rights-of-way, agreements, restrictions, mortgages, liens, executions and other encumbrances, save and except for those approved by the Bank in writing.
- i) All information that the Borrower has provided to the Bank is accurate and complete respecting, where applicable:
 - i) the names of the Borrower's directors and the names and addresses of the Borrower's beneficial owners;
 - ii) the names and addresses of the Borrower's trustees, known beneficiaries and/or settlors; and
 - iii) the Borrower's ownership, control and structure.

7. STANDARD POSITIVE COVENANTS

So long as any amounts remain outstanding and unpaid under this Agreement or so long as any commitment under this Agreement remains in effect, the Borrower will, and will ensure that its subsidiaries and each of the Guarantors will:

- a) Pay all amounts of principal, interest and fees on the dates, times and place specified herein, under the Rate and Payment Terms Notice, and under any other agreement between the Bank and the Borrower.
- b) Advise the Bank of any change in the amount and the terms of any credit arrangement made with other lenders or any action taken by another lender to recover amounts outstanding with such other lender.
- c) Advise promptly after the happening of any event which will result in a material adverse change in the financial condition, business, operations, or prospects of the Borrower or the occurrence of any Event of Default or default under this Agreement or under any other agreement for borrowed money.
- d) Do all things necessary to maintain in good standing its corporate existence and preserve and keep all material agreements, rights, franchises, licenses, operations, contracts or other arrangements in full force and effect.
- e) Take all necessary actions to ensure that the Bank Security and its obligations hereunder will rank ahead of all other indebtedness of and all other security granted by the Borrower.
- f) Pay all taxes, assessments and government charges unless such taxes, assessments, or charges are being contested in good faith and appropriate reserves shall be made with funds set aside in a separate trust fund.
- g) Provide the Bank with information and financial data as it may request from time to time, including, without limitation, such updated information and/or additional supporting information as the Bank may require with respect to any or all the matters in the Borrower's representation and warranty in Section 6(i).
- h) Maintain property, plant and equipment in good repair and working condition.
- i) Inform the Bank of any actual or probable litigation and furnish the Bank with copies of details of any litigation or other proceedings, which might affect the financial condition, business, operations, or prospects of the Borrower.
- j) Provide such additional security and documentation as may be required from time to time by the Bank or its solicitors.

- k) Continue to carry on the business currently being carried on by the Borrower its subsidiaries and each of the Guarantors at the date hereof.
- l) Maintain adequate insurance on all of its assets, undertakings, and business risks.
- m) Permit the Bank or its authorized representatives full and reasonable access to its premises, business, financial and computer records and allow the duplication or extraction of pertinent information therefrom.
- n) Comply with all applicable laws.

8. STANDARD NEGATIVE COVENANTS

So long as any amounts remain outstanding and unpaid under this Agreement or so long as any commitment under this Agreement remains in effect, the Borrower will not and will ensure that its subsidiaries and each of the Guarantors will not:

- a) Create, incur, assume, or suffer to exist, any mortgage, deed of trust, pledge, lien, security interest, assignment, charge, or encumbrance (including without limitation, any conditional sale, or other title retention agreement, or finance lease) of any nature, upon or with respect to any of its assets or undertakings, now owned or hereafter acquired, except for those Permitted Liens, if any, set out in the Letter.
- b) Create, incur, assume or suffer to exist any other indebtedness for borrowed money (except for indebtedness resulting from Permitted Liens, if any) or guarantee or act as surety or agree to indemnify the debts of any other Person.
- c) Merge or consolidate with any other Person, or acquire all or substantially all of the shares, assets or business of any other Person.
- d) Sell, lease, assign, transfer, convey or otherwise dispose of any of its now owned or hereafter acquired assets (including, without limitation, shares of stock and indebtedness of subsidiaries, receivables and leasehold interests), except for inventory disposed of in the ordinary course of business.
- e) Terminate or enter into a surrender of any lease of any property mortgaged under the Bank Security.
- f) Cease to carry on the business currently being carried on by each of the Borrower, its subsidiaries, and the Guarantors at the date hereof.
- g) Permit any change of ownership or change in the capital structure of the Borrower.

9. ENVIRONMENTAL

The Borrower represents and warrants (which representation and warranty shall continue throughout the term of this Agreement) that the business of the Borrower, its subsidiaries and each of the Guarantors is being operated in compliance with applicable laws and regulations respecting the discharge, omission, spill or disposal of any hazardous materials and that any and all enforcement actions in respect thereto have been clearly conveyed to the Bank.

The Borrower shall, at the request of the Bank from time to time, and at the Borrower's expense, obtain and provide to the Bank an environmental audit or inspection report of the property from auditors or inspectors acceptable to the Bank.

The Borrower hereby indemnifies the Bank, its officers, directors, employees, agents and shareholders, and agrees to hold each of them harmless from all loss, claims, damages and expenses (including legal and audit expenses) which may be suffered or incurred in connection with the indebtedness under this Agreement or in connection with the Bank Security.

10. STANDARD EVENTS OF DEFAULT

The Bank may accelerate the payment of principal and interest under any committed credit facility hereunder and cancel any undrawn portion of any committed credit facility hereunder, at any time after the occurrence of any one of the following Events of Default:

- a) Non-payment of principal outstanding under this Agreement when due or non-payment of interest or fees outstanding under this Agreement within 3 Business Days of when due.
- b) If any representation, warranty or statement made hereunder or made in connection with the execution and delivery of this Agreement or the Bank Security is false or misleading at any time.
- c) If any representation or warranty made or information provided by the Guarantor to the Bank from time to time, including without limitation, under or in connection with the Personal Financial Statement and Privacy Agreement provided by the Guarantor, is false or misleading at any time.
- d) If there is a breach or non-performance or non-observance of any term or condition of this Agreement or the Bank Security and, if such default is capable to being remedied, the default continues unremedied for 5 Business Days after the occurrence.
- e) If the Borrower, any one of its subsidiaries, or, if any of the Guarantors makes a general assignment for the benefit of creditors, files or presents a petition, makes a proposal or commits any act of bankruptcy, or if any action is taken for the winding up, liquidation or the appointment of a liquidator, trustee in bankruptcy, custodian, curator, sequestrator, receiver or any other officer with similar powers or if a judgment or order shall be entered by any court approving a petition for reorganization, arrangement or composition of or in respect of the Borrower, any of its subsidiaries, or any of the Guarantors or if the Borrower, any of its subsidiaries, or any of the Guarantors is insolvent or declared bankrupt.
- f) If there exists a voluntary or involuntary suspension of business of the Borrower, any of its subsidiaries, or any of the Guarantors.
- g) If action is taken by an encumbrancer against the Borrower, any of its subsidiaries, or any of the Guarantors to take possession of property or enforce proceedings against any assets.
- h) If any final judgment for the payment of monies is made against the Borrower, any of its subsidiaries, or any of the Guarantors and it is not discharged within 30 days from the imposition of such judgment.
- i) If there exists an event, the effect of which with lapse of time or the giving of notice, will constitute an event of default or a default under any other agreement for borrowed money in excess of the Cross Default Threshold entered into by the Borrower, any of its subsidiaries, or any of the Guarantors.
- j) If the Borrower, any one of its subsidiaries, or any of the Guarantors default under any other present or future agreement with the Bank or any of the Bank's subsidiaries, including without limitation, any other loan agreement, forward foreign exchange transactions, interest rate and currency and/or commodity swaps.
- k) If the Bank Security is not enforceable or if any party to the Bank Security shall dispute or deny any liability or any of its obligations under the Bank Security, or if any Guarantor terminates a guarantee in respect of future advances.
- l) If, in the Bank's determination, a material adverse change occurs in the financial condition, business operations or prospects of the Borrower, any of the Borrower's subsidiaries, or any of the Guarantors.
- m) If the Borrower or a Guarantor is an individual, the Borrower or such Guarantor dies or is found by a court to be incapable of managing his or her affairs.

11. ACCELERATION

If the Bank accelerates the payment of principal and interest hereunder, the Borrower shall immediately pay to the Bank all amounts outstanding hereunder, including without limitation, the amount of unmatured B/As, CDOR and LIBOR Loans and the amount of all drawn and undrawn L/Gs and L/Cs. All cost to the Bank of unwinding CDOR and LIBOR Loans and all loss suffered by the Bank in re-employing amounts repaid will be paid by the Borrower.

The Bank may demand the payment of principal and interest under the Operating Loan or Farm Property Line of Credit (and any other uncommitted facility) hereunder and cancel any undrawn portion of the Operating Loan or Farm Property Line of Credit (and any other uncommitted facility) hereunder, at any time whether or not an Event of Default has occurred.

12. INDEMNITY

The Borrower agrees to indemnify the Bank from and against any and all claims, losses and liabilities arising or resulting from this Agreement. USD loans must be repaid with USD and CAD loans must be repaid with CAD and the Borrower shall indemnify the Bank for any loss suffered by the Bank if USD loans are repaid with CAD or vice versa, whether such payment is made pursuant to an order of a court or otherwise. In no event will the Bank be liable to the Borrower for any direct, indirect or consequential damages arising in connection with this Agreement.

13. TAXATION ON PAYMENTS

All payments made by the Borrower to the Bank will be made free and clear of all present and future taxes (excluding the Bank's income taxes), withholdings or deductions of whatever nature. If these taxes, withholdings or deductions are required by applicable law and are made, the Borrower, shall, as a separate and independent obligation, pay to the Bank all additional amounts as shall fully indemnify the Bank from any such taxes, withholdings or deductions.

14. REPRESENTATION

No representation or warranty or other statement made by the Bank concerning any of the Facilities shall be binding on the Bank unless made by it in writing as a specific amendment to this Agreement.

15. CHANGING THE AGREEMENT

- a) The Bank may, from time to time, unilaterally change the provisions of this Agreement where (i) the provisions of the Agreement relate to the Operating Loan or Farm Property Line of Credit (and any other uncommitted facility), including changing or adding fees that may be charged in connection therewith, or (ii) such change is for the benefit of the Borrower, or made at the Borrower's request, including without limitation, decreases to fees or interest payable hereunder or (iii) where such change makes compliance with this Agreement less onerous to the Borrower, including without limitation, release of security. These changes can be made by the Bank providing written notice to the Borrower of such changes in the form of a specific waiver or a document constituting an amending agreement. The Borrower is not required to execute such waiver or amending agreement, unless the Bank requests the Borrower to sign such waiver or amending agreement. A change in the Prime Rate and USBR is not an amendment to the terms of this Agreement that requires notification to be provided to the Borrower.
- b) Changes to the Agreement, other than as described in a) above, including changes to covenants and fees payable by the Borrower, are required to be agreed to by the Bank and the Borrower in writing, by the Bank and the Borrower each signing an amending agreement.
- c) The Bank is not required to notify a Guarantor of any change in the Agreement, including any increase in the Credit Limit.

16. ADDED COST

If the introduction of or any change in any present or future law, regulation, treaty, official or unofficial directive, or regulatory requirement, (whether or not having the force of law) or in the interpretation or application thereof, relates to:

- i) the imposition or exemption of taxation of payments due to the Bank or on reserves or deemed reserves in respect of the undrawn portion of any Facility or loan made available hereunder; or,
- ii) any reserve, special deposit, regulatory or similar requirement against assets, deposits, or loans or other acquisition of funds for loans by the Bank; or,
- iii) the amount of capital required or expected to be maintained by the Bank as a result of the existence of the advances or the commitment made hereunder;

and the result of such occurrence is, in the sole determination of the Bank, to increase the cost of the Bank or to reduce the income received or receivable by the Bank hereunder, the Borrower shall, on demand by the Bank, pay to the Bank that amount which the Bank estimates will compensate it for such additional cost or reduction in income and the Bank's estimate shall be conclusive, absent manifest error.

17. EXPENSES

The Borrower shall pay, within 5 Business Days following notification, any fees and expenses (including but not limited to all legal fees) incurred by the Bank in connection with the preparation, registration, ongoing administration, and discharge of this Agreement and the Bank Security and with the enforcement of the Bank's rights and remedies under this Agreement and the Bank Security whether or not any amounts are advanced under the Agreement. These fees and expenses shall include, but not be limited to, any outside counsel fees and expenses, and any in-house legal fees and expenses (if in-house counsel are used), and any outside professional advisory fees and expenses, and any registration, renewal and discharge fees in connection with the Bank Security, including but not limited to, as applicable, land registry, intellectual property registry, Personal Property Security Act, and Le Registre des droits personnels et réels mobiliers fees as established by the applicable federal, provincial and/or territorial government(s) from time to time. The Borrower shall pay interest on unpaid amounts due pursuant to this paragraph at the All-In Rate plus 2% per annum.

Without limiting the generality of Section 25, the Bank or the Bank's agent, is authorized to debit any of the Borrower's accounts with the amount of the fees and expenses owed by the Borrower hereunder, including any registration, renewal and discharge fee as described in this section in connection with the Bank Security, even if that debiting creates an overdraft in any such account. If there are insufficient funds in the Borrower's accounts to reimburse the Bank or its agent for payment of the fees and expenses owed by the Borrower hereunder, the amount debited to the Borrower's accounts shall be deemed to be a Prime Based Loan under the Operating Loan or Farm Property Line of Credit.

The Borrower will, if requested by the Bank, sign a Pre-Authorized Payment Authorization in a format acceptable to the Bank to permit the Bank's agent to debit the Borrower's accounts as contemplated in this Section.

18. NON WAIVER

Any failure by the Bank to object to or take action with respect to a breach of this Agreement or any Bank Security or upon the occurrence of an Event of Default shall not constitute a waiver of the Bank's right to take action at a later date on that breach. No course of conduct by the Bank will give rise to any reasonable expectation which is in any way inconsistent with the terms and conditions of this Agreement and the Bank Security or the Bank's rights thereunder.

19. EVIDENCE OF INDEBTEDNESS

The Bank shall record on its records the amount of all loans made hereunder, payments made in respect thereto, and all other amounts becoming due to the Bank under this Agreement. The Bank's records constitute, in the absence of manifest error, conclusive evidence of the indebtedness of the Borrower to the Bank pursuant to this Agreement.

The Borrower will sign the Bank's standard form Letter of Credit Indemnity Agreement for all L/Cs and L/Gs issued by the Bank.

With respect to chattel mortgages taken as Bank Security, this Agreement is the Promissory Note referred to in same chattel mortgage, and the indebtedness incurred hereunder is the true indebtedness secured by the chattel mortgage.

20. ENTIRE AGREEMENTS

This Agreement replaces any previous letter agreements dealing specifically with terms and conditions of the credit facilities described in the Letter. Agreements relating to other credit facilities made available by the Bank continue to apply for those other credit facilities. This Agreement, and if applicable, the Letter of Credit Indemnity Agreement, are the entire agreements relating to the Facilities described in this Agreement.

21. NON-MERGER

Notwithstanding the execution, delivery or registration of the Bank Security and notwithstanding any advances made pursuant thereto, this Agreement shall continue to be valid, binding and enforceable and shall not merge as a result thereof. Any default under this Agreement shall constitute concurrent default under the Bank Security. Any default under the Bank Security shall constitute concurrent default under this Agreement. In the event of an

inconsistency between the terms of this Agreement and the terms of the Bank Security, the terms of this Agreement shall prevail and the inclusion of any term in the Bank Security that is not dealt with in this Agreement shall not be an inconsistency.

22. ASSIGNMENT

The Bank may assign or grant participation in all or part of this Agreement or in any loan made hereunder without notice to and without the Borrower's consent.

The Borrower may not assign or transfer all or any part of its rights or obligations under this Agreement.

23. RELEASE OF INFORMATION

The Borrower hereby irrevocably authorizes and directs the Borrower's accountant, (the "Accountant") to deliver all financial statements and other financial information concerning the Borrower to the Bank and agrees that the Bank and the Accountant may communicate directly with each other.

24. FX CLOSE OUT

The Borrower hereby acknowledges and agrees that in the event any of the following occur: (i) Default by the Borrower under any forward foreign exchange contract ("FX Contract"); (ii) Default by the Borrower in payment of monies owing by it to anyone, including the Bank; (iii) Default in the performance of any other obligation of the Borrower under any agreement to which it is subject; or (iv) the Borrower is adjudged to be or voluntarily becomes bankrupt or insolvent or admits in writing to its inability to pay its debts as they come due or has a receiver appointed over its assets, the Bank shall be entitled without advance notice to the Borrower to close out and terminate all of the outstanding FX Contracts entered into hereunder, using normal commercial practices employed by the Bank, to determine the gain or loss for each terminated FX contract. The Bank shall then be entitled to calculate a net termination value for all of the terminated FX Contracts which shall be the net sum of all the losses and gains arising from the termination of the FX Contracts which net sum shall be the "Close Out Value" of the terminated FX Contracts. The Borrower acknowledges that it shall be required to forthwith pay any positive Close Out Value owing to the Bank and the Bank shall be required to pay any negative Close Out Value owing to the Borrower, subject to any rights of set-off to which the Bank is entitled or subject.

25. SET-OFF

In addition to and not in limitation of any rights now or hereafter granted under applicable law, the Bank may at any time and from time to time without notice to the Borrower or any other Person, any notice being expressly waived by the Borrower, set-off and compensate and apply any and all deposits, general or special, time or demand, provisional or final, matured or unmatured, in any currency, and any other indebtedness or amount payable by the Bank (irrespective of the place of payment or booking office of the obligation), to or for the credit of or for the Borrower's account, including without limitation, any amount owed by the Bank to the Borrower under any FX Contract or other treasury or derivative product, against and on account of the indebtedness and liability under this Agreement notwithstanding that any of them are contingent or unmatured or in a different currency than the indebtedness and liability under this Agreement.

When applying a deposit or other obligation in a different currency than the indebtedness and liability under this Agreement to the indebtedness and liability under this Agreement, the Bank will convert the deposit or other obligation to the currency of the indebtedness and liability under this Agreement using the exchange rate determined by the Bank at the time of the conversion.

26. SEVERABILITY

In the event any one or more of the provisions of this Agreement shall for any reason, including under any applicable statute or rule of law, be held to be invalid, illegal or unenforceable, that part will be severed from this Agreement and will not affect the enforceability of the remaining provisions of this Agreement, which shall remain in full force and effect.

27. MISCELLANEOUS

- i) The Borrower has received a signed copy of this Agreement;

- ii) If more than one Person, firm or corporation signs this Agreement as the Borrower, each party is jointly and severally liable hereunder, and the Bank may require payment of all amounts payable under this Agreement from any one of them, or a portion from each, but the Bank is released from any of its obligations by performing that obligation to any one of them;
- iii) Accounting terms will (to the extent not defined in this Agreement) be interpreted in accordance with accounting principles established from time to time by the Canadian Institute of Chartered Accountants (or any successor) consistently applied, and all financial statements and information provided to the Bank will be prepared in accordance with those principles;
- iv) This Agreement is governed by the law of the Province or Territory where the Branch/Centre is located;
- v) Unless stated otherwise, all amounts referred to herein are in Canadian dollars.
- vi) If the Borrower qualifies as an Eligible Enterprise and the facility/ies hereunder are not secured by a mortgage on real property, the Borrower has the right to cancel this Agreement without incurring a cancellation charge until the end of the third Business Day after the day on which this Agreement is entered into and may be entitled to the refund of certain fees other than (i) any amounts related to the use of the product or service prior to its cancellation; and (ii) any expense that the Bank has reasonably incurred in providing the product or service. Eligible Enterprise, as defined in the Bank Act, means a business with authorized credit of less than CAD\$1,000,000, fewer than 500 employees and annual revenues of less than CAD\$50,000,000

28. CUSTOMER RESOLUTION PROCESS

Tell us about your problem or concern in the way that is most convenient for you. You may contact a Customer Service Representative at your Branch or Business Unit that handles your account, call us toll free at 1-833-259-5980, contact us by mail at Customer Service, TD Centre, P.O. Box 193, Toronto, Ontario, M5K 1H6, by fax at 1-877-983-2932 or by e-mail at customer.service@td.com. As a next step, if your concern remains unresolved, the Manager will offer to elevate your problem to a representative of the Senior Management Office. Alternatively, if you prefer to elevate the problem yourself, you may contact the Manager, or one of our telephone banking specialists at the toll-free number above, and they will assist you.

If your concern remains unresolved, you may contact the Senior Customer Complaints Office by email at td.scco@td.com, by mail at P.O. Box 1, TD Centre, Toronto, Ontario, M5K 1A2, or toll free at 1-888-361-0319. If your concern still remains unresolved, you may then contact the ADR Chambers Banking Ombuds Office (ADRBO) by mail at 31 Adelaide Street East, P.O. Box 1066, Toronto, Ontario, M5C 1K9 or telephone: 1-800-941-3655 or toll free fax: 1-877-307-5127 and at www.bankingombuds.ca or contact@bankingombuds.ca. For a more detailed overview please obtain a copy of our "If You Have a Problem or Concern" brochure from any branch or from our website at www.td.com.

Financial Consumer Agency of Canada (FCAC) - If you have a complaint regarding a potential violation of a consumer protection law, a public commitment, or an industry code of conduct, you can contact the FCAC in writing at: 6th Floor, Enterprise Building, 427 Laurier Ave. West, Ottawa, Ontario K1R 1B9. The FCAC can also be contacted by telephone at 1-866-461-3222 (en français 1-866-461-2232) or through its website at www.fcac-acfc.gc.ca. Please note that the FCAC does not become involved in matters of redress or compensation - all such requests must follow the process set out above.

29. CONSENT TO THE COLLECTION, USE AND/OR DISCLOSURE OF INFORMATION - INDIVIDUALS

In this Section, "you" and "your" means: (i) any individual, or that individual's authorized representative, who is the Borrower; (ii) any individual, or that individual's authorized representative, who has offered to provide a guarantee for any product or service offered by us to the Borrower; (iii) any individual who is a partner of the Borrower; and (iv) the signing authorities, as identified to us, of the Borrower. In this Section and in Section 30, the words "we", "us" and "our" mean TD Bank Group ("TD"). TD includes The Toronto-Dominion Bank and its world-wide affiliates, which provide deposit, investment, loan, securities, trust, insurance and other products or services. The word "Information" means financial, personal and other details about you, that you provide to us and we obtain from others outside our organization, including through the products and services that are provided by us to the Borrower. You agree that, at the time you request to begin a relationship with us and during the course of our relationship, we may share your Information within TD, and collect, use and disclose your Information as described in the Privacy Agreement separately provided to you and available at any TD Canada Trust branch or online at td.com, including for, but not limited to, the purposes of identifying you, providing you with ongoing service, helping us serve you better, protecting us both from fraud and error, complying with legal and regulatory requirements, and marketing products and services to you.

We may communicate with you for any of these purposes by telephone, fax, text messaging, or other electronic means, and automatic dialing-announcing device, at the numbers you have provided to us, or by ATM, internet, mail, email and other methods. If:

- a) there are changes to the signing authorities of the Borrower; or
- b) at the time of obtaining a product or service from us, the Borrower has indicated that the product or service will be used by or on behalf of a third party who is an individual; or
- c) at the time of obtaining a product or service from us, the Borrower, if a corporation, has any individual who owns or controls, directly or indirectly, 25 per cent or more of the shares of the corporation, or has any director, where such individual or director is not, as such time, either a signing authority of the corporation or a personal banking customer of TD; or
- d) at the time of obtaining a product or service from us, such Borrower, if other than a corporation, has any individual who owns or controls, directly or indirectly, 25 per cent or more of such Borrower, where such individual is not, at such time, either a signing authority of the Borrower or a personal banking customer of TD;

then the Borrower agrees to make such signing authorities and any such individual or director aware of the Privacy Agreement, advise them that they are subject to such agreement and inform them that a copy of such agreement is available at any TD Canada Trust branch or online at td.com. The definition of "you" in the Privacy Agreement shall be deemed to include any such individual or director. Notwithstanding the foregoing, c) and d) shall not apply where the Borrower is a public body, or a corporation that has minimum net assets of \$75 million on its last audited balance sheet and whose shares are traded on a Canadian stock exchange or a stock exchange that is prescribed by section 3201 of the Income Tax Regulations, as may be amended from time to time, and operates in a country that is a member of the Financial Action Task Force.

To understand how you can withdraw your consent, refer to the "Marketing Purposes" section of the Privacy Agreement or contact us at 1-866-567-8888.

30. CONSENT TO THE COLLECTION AND/OR DISCLOSURE OF INFORMATION – BORROWER (OTHER THAN AN INDIVIDUAL)

In addition to any rights the Bank may have regarding the collection and disclosure of the Borrower's information, the Borrower authorizes the Bank to obtain information about the Borrower from, and disclose information about the Borrower to, TD, other lenders, credit reporting or credit rating agencies, credit bureaus, auditors, governmental and regulatory authorities, references provided by the Borrower and any supplier, agent or other party that performs services for the Borrower or for the Bank.

31. DEFINITIONS

Capitalized Terms used in this Agreement shall have the following meanings:

"*Agreement*" means the agreement between the Bank and the Borrower set out in the Letter and this Schedule "A" - Standard Terms and Conditions, as amended from time to time in accordance with Section 15 of this Schedule "A".

"*All-In Rate*" means the greater of the interest rates that the Borrower pays for Floating Rate Loans or the highest fixed rate paid for Fixed Rate Term Loans.

"*Business Day*" means any day (other than a Saturday or Sunday) that the Branch/Centre is open for business.

"*Branch/Centre*" means The Toronto-Dominion Bank branch or banking centre noted on the first page of the Letter, or such other branch or centre as may from time to time be designated by the Bank.

"*Contractual Term Maturity Date*" means the last day of the Contractual Term period. If the Letter does not set out a specific Contractual Term period but rather refers to a period of time up to which the Contractual Term Maturity Date can occur, the Bank and the Borrower must agree on a Contractual Term Maturity Date before first drawdown, which Contractual Term Maturity Date will be set out in the Rate and Payments Terms Notice.

"*Cross Default Threshold*" means the cross default threshold set out in the Letter. If no such cross default threshold is set out in the Letter it will be deemed to be zero.

"*Face Amount*" means, in respect of:

- (i) a B/A, the amount payable to the holder thereof on its maturity;
- (ii) A L/C or L/G, the maximum amount payable to the beneficiary specified therein or any other Person to whom payments may be required to be made pursuant to such L/C or L/G.

"*Daily Simple SOFR*" means, for any day, SOFR, with the conventions for this rate (which will include a lookback being established by the Bank in accordance with the conventions for this rate recommended by the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or any successor thereto, for determining "Daily Simple SOFR" for bilateral business loans; provided, that if the Bank decides that any such convention is not administratively feasible for the Bank, then the Bank may establish another convention in its reasonable discretion.

"*Early Opt-in Effective Date*" means, with respect to any Early Opt-in Election, the sixth (6th) Business Day after the date notice of such Early Opt-in Election is provided to the Borrower.

"*Early Opt-in Election*" means the occurrence of:

- (i) a determination by the Bank that at least five currently outstanding U.S. dollar-denominated syndicated or bilateral credit facilities at such time contain (as a result of amendment or as originally executed) a SOFR-based rate (including SOFR, a term SOFR or any other rate based upon SOFR) as a benchmark rate, and
- (ii) the election by the Bank to trigger a fallback from LIBOR and the provision by the Bank of written notice of such election to the Borrower.

"*Fixed Rate Term Loan*" means any drawdown in Canadian dollars under a Facility at an interest rate which is fixed for a Rate Term at such rate as is determined by the Bank at its sole discretion.

"*Floating Rate Loan*" means any loan drawn down, converted or extended under a Facility at an interest rate which is referenced to a variable rate of interest, such as the Prime Rate.

"*Inventory Value*" means, at any time of determination, the total value (based on the lower of cost or market) of the Borrower's inventories that are subject to the Bank Security (other than (i) those inventories supplied by trade creditors who at that time have not been fully paid and would have a right to repossess all or part of such inventories if the Borrower were then either bankrupt or in receivership, (ii) those inventories comprising work in process and (iii) those inventories that the Bank may from time to time designate in its sole discretion) minus the total amount of any claims, liens or encumbrances on those inventories having or purporting to have priority over the Bank.

"*Letter*" means the letter from the Bank to the Borrower to which this Schedule "A" - Standard Terms and Conditions is attached.

"Letter of Credit" or "L/C" means a documentary letter of credit or similar instrument in form and substance satisfactory to the Bank.

"Letter of Guarantee" or "L/G" means a stand-by letter of guarantee or similar instrument in form and substance satisfactory to the Bank.

"LIBOR Replacement Conforming Changes" means any technical, administrative or operational changes (including changes to applicable definitions, timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of breakage provisions, and other technical, administrative or operational matters) that the Bank decides may be appropriate to reflect the adoption and implementation of the LIBOR Successor Rate and the Bank's administration thereof in a manner substantially consistent with market practice (or, if the Bank decides that adoption of any portion of such market practice is not administratively feasible or determines that no market practice for the administration of the LIBOR Successor Rate exists, in such other manner of administration as the Bank decides is reasonably necessary in connection with the administration of this Agreement and the other documents required hereunder).

"LIBOR Successor Rate" means, for any interest period as of the applicable date of determination, the first alternative set forth below that can be determined by the Bank:

- (i) the sum of: (a) Term SOFR and (b) 0.11448% (11.448 basis points) for an interest period of 1 month, 0.26161% (26.161 basis points) for an interest period of 3 months, and 0.42826% (42.826 basis points) for an interest period of 6 months, or
- (ii) the sum of: (x) Daily Simple SOFR and (y) the spread adjustment selected or recommended by the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or any successor thereto, for the replacement of the contract maturity of LIBOR with a SOFR-based rate having approximately the same length as the interest payment period specified in the "LIBOR Discontinuation" clause in Section 3 of this Schedule A.

"Maturity Date" for a Facility, means the date on which all amounts outstanding under such Facility are due and payable to the Bank.

"Person" includes any individual, sole proprietorship, corporation, partnership, joint venture, trust, unincorporated association, association, institution, entity, party, or government (whether national, federal, provincial, state, municipal, city, county, or otherwise and including any instrumentality, division, agency, body, or department thereof).

"Purchase Money Security Interest" means a security interest on an asset which is granted to a lender or to the seller of such asset in order to secure the purchase price of such asset or a loan incurred to acquire such asset, provided that the amount secured by the security interest does not exceed the cost of the asset and provided that the Borrower provides written notice to the Bank prior to the creation of the security interest, and the creditor under the security interest has, if requested by the Bank, entered into an inter-creditor agreement with the Bank, in a format acceptable to the Bank.

"Rate Term" means that period of time as selected by the Borrower from the options offered to it by the Bank, during which a Fixed Rate Term Loan will bear a particular interest rate. If no Rate Term is selected, the Borrower will be deemed to have selected a Rate Term of 1 year.

"Rate and Payment Terms Notice" means the written notice sent by the Bank to the Borrower setting out the interest rate and payment terms for a particular drawdown.

"Receivable Value" means, at any time of determination, the total value of those of the Borrower's trade accounts receivable that are subject to the Bank Security other than (i) those accounts then outstanding for 90 days, (ii) those accounts owing by Persons, firms or corporations affiliated with the Borrower, (iii) those accounts that the Bank may from time to time designate in its sole discretion, (iv) those accounts subject to any claim, liens, or encumbrance having or purporting to have priority over the Bank, (v) those accounts which are subject to a claim of set-off by the obligor under such account, MINUS the total amount of all claims, liens, or encumbrances on those receivables having or purporting to have priority over the Bank.

"Receivables/Inventory Summary" means a summary of the Borrower's trade account receivables and inventories, in form as the Bank may require and certified by a senior officer/representative of the Borrower.

"SOFR" means, with respect to any Business Day, a rate per annum equal to the secured overnight financing rate for such Business Day published by the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate) on the website of the Federal Reserve Bank of New York, currently at <http://www.newyorkfed.org> (or any successor source for the secured overnight financing rate identified as such by the administrator of the secured financing rate from time to time), on the immediately succeeding Business Day.

"Term SOFR" means, for the applicable corresponding interest period, the forward-looking term rate based on SOFR that has been selected or recommended by the Federal Reserve System or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or any successor thereto.

"USD" or "USD Equivalent" means, on any date, the equivalent amount in United States Dollars after giving effect to a conversion of a specified amount of Canadian Dollars to United States Dollars at the exchange rate determined by the Bank at the time of the conversion.

Exhibit “D”



TO: The Toronto-Dominion Bank (the "Bank")

Branch of the Bank: Branch #1275, 20 Milverton Drive & Hwy 10, Mississauga, ON L5R 3G2

Granted By: MALAKAND PETROLEUM INC.

(the "Grantor")

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Grantor agrees with the Bank as follows:

1. Security Interest

The Grantor hereby grants to the Bank a security interest in, and assigns (other than with respect to trade-marks), mortgages, charges and pledges (collectively, the "Security Interest") to the Bank, all property of the Grantor, including all present and after acquired personal property and all other property, assets and undertaking of the kind hereinafter described below, in which the Grantor now has, or hereafter acquires, any right, title or interest, and accretions and accessions thereto (collectively called the "Collateral"):

- (a) **Intangibles.** All intangible property not otherwise described in this Section 1, including all contractual rights and insurance claims, options, permits, licences, quotas, subsidies, franchises, orders, judgments, patents, trademarks, trade names, trade secrets and know-how, inventions, goodwill, copyrights and other intellectual property of the Grantor, including any right or licence to use intellectual property belonging to a third party together with any specified collateral described in Schedule "A" hereto (collectively called "Intangibles");
- (b) **Chattel Paper and Documents of Title.** All chattel paper and all warehouse receipts, bills of lading and other documents of title, whether negotiable or not;
- (c) **Deposits and Credit Balances.** All monies and credit balances, including interest due thereon, which are now or may hereafter from time to time be on deposit with or standing to the credit of the Grantor with the Bank or any other bank, financial institution or other Person;
- (d) **Books and Records.** All deeds, documents, writings, papers, books of account and other books and records in any form, electronic or otherwise, relating to or evidencing any of the Collateral;
- (e) **Accounts and Book Debts.** All debts, accounts, claims and choses in action for moneys now due or owing or accruing due or which may hereafter become due or owing to the Grantor, including claims against the Crown in right of Canada or of any province, moneys which may become payable under any policy of insurance (collectively called "Accounts and Book Debts"), together with all contracts, securities, bills, notes, lien notes, judgments, mortgages, letters of credit and advices of credit, and all other rights, benefits and documents which are now or which may be taken, vested in or held by the Grantor in respect of or as security for the Accounts and Book Debts or any part thereof, and the full benefit and advantage thereof and all rights of actions, claims or demands which the Grantor now has or may hereafter have in respect of the foregoing;
- (f) **Equipment.** All tools, machinery, apparatus, equipment, vehicles, furniture, plants, fixtures, and other tangible personal property, other than Inventory, wherever situate, including the assets, if any, described in Schedule "A" hereto (collectively called "Equipment");
- (g) **Inventory.** All goods forming the inventory of the Grantor, of whatever kind and wherever located, whether raw material, work in process or finished goods held for sale, lease or resale, or furnished or to be furnished under contracts for service or used or consumed in the business of the Grantor, goods used in or procured for packing or packaging, timber cut or to be cut, oil, gas and minerals extracted or to be extracted, all livestock and the young thereof after conception and all crops which become such within one year after the date of execution of this Agreement (collectively called "Inventory");
- (h) **Instruments.** All bills, notes, cheques, letters of credit and other instruments, whether negotiable or not (collectively called "Instruments");
- (i) **Securities.** All shares, stocks, warrants, options, bonds, debentures, debenture stock and all other securities and investment property of any kind and all instruments, whether negotiable or non-negotiable, and interest thereon and dividends, whether in shares, money or property, received or receivable upon or in respect of any securities and other investment property and all money or other property paid or payable on account of any return on, or repayment of, capital in respect of any securities or otherwise distributed or distributable in respect thereof or that will in any way be charged to, or be payable out of or in respect of, the capital of the issuer of the securities (collectively called "Securities");
- (j) **Real Property.** All real and immovable property, both freehold and leasehold, together with all buildings and fixtures (collectively called "Real Property"), and all rights under any lease or agreement relating to Real Property;

- (k) **Proceeds.** All proceeds of the property described above, including any property in any form derived directly or indirectly from any use or dealing with the property described above or the proceeds therefrom or that indemnifies or compensates for damage or loss to such property or the proceeds therefrom, including the money held in banks, financial institutions or any other Person (collectively called "Proceeds");

provided that (i) the Security Interest does not and will not extend to, and the Collateral will not include, any agreement, lease, right, franchise, licence or permit (the "contractual rights") to which the Grantor is a party or of which the Grantor has the benefit, to the extent that the Security Interest would permit any person to terminate the contractual rights unless the consent of one or more Persons has been obtained and until such consent has been obtained, which the Grantor agrees it will use commercially reasonable efforts to obtain if requested by the Bank, the Grantor agrees to hold its interest therein in trust for the Bank, and notwithstanding the foregoing, contractual rights shall not include any account or chattel paper; and (ii) with respect to Real Property, (A) the Security Interest granted hereby is constituted by way of a floating charge, but will become a fixed charge upon the earlier of the Obligations becoming immediately payable, and the occurrence of any other event that by operation of law would result in such floating charge becoming a fixed charge; and (B) the assignment, mortgage and charge granted hereby will not extend to the last day of the term of any lease or agreement relating to Real Property, but the Grantor will hold such last day in trust for the Bank and, upon the enforcement by the Bank of its Security Interest, will assign such last day as directed by the Bank.

2. Obligations Secured

The Security Interest secures the payment and performance of all present and future obligations of the Grantor to the Bank, including all debts and liabilities, direct or indirect, absolute or contingent, matured or not, wheresoever and howsoever incurred, whether incurred before, at the time of, or after the execution of this Agreement, whether the indebtedness and liability is from time to time reduced and thereafter increased or entirely extinguished and thereafter incurred again, whether arising from dealings between the Bank and the Grantor or from other dealings or proceedings by which the Bank may be or become in any manner whatsoever a creditor of the Grantor, and in any currency, whether incurred by the Grantor alone or with another or others and whether as a principal or surety, including all interest thereon and all amounts owed by the Grantor under this Agreement for fees, costs and expenses and in respect of indemnities granted under this Agreement (collectively called the "Obligations").

3. Definitions

- (a) Any word or term that is not otherwise defined in this Agreement shall have the meaning given to it in the *Personal Property Security Act* of the province in which the Branch of the Bank is located, as amended from time to time, and being referred to in this Agreement as the "PPSA". Any reference herein to "Collateral" shall, unless the context requires otherwise, be deemed to be a reference to "Collateral or any part thereof".
- (b) The following terms shall have the respective meanings set out below:

"*Branch of the Bank*" means the branch of the Bank located at the address specified above.

"*Business Day*" means any day other than a Saturday, Sunday or statutory holiday in the province in which the Branch of the Bank is located.

"*Control Agreement*" means:

- (a) with respect to any uncertificated security, an agreement between the issuer of such uncertificated security and any Person whereby such issuer agrees to comply with instructions that are originated by such Person in respect of such uncertificated security, without the further consent of the Grantor; and
- (b) with respect to any securities account or security entitlement, an agreement between the securities intermediary which maintains the particular securities account to which security entitlements included in the Collateral relate and any Person whereby such securities intermediary agrees to comply with any entitlement orders with respect to such securities accounts or security entitlements that are originated by such Person, without the further consent of the Grantor.

"*Person*" means any individual, sole proprietorship, joint venture, partnership, corporation, company, firm, association, co-operative, estate, government, government agency, regulatory authority, trust, or any entity of any nature.

4. Representations & Warranties

The Grantor hereby represents and warrants with the Bank and so long as this Agreement remains in effect shall be deemed to continuously represent and warrant that:

- (a) **Location of Head Office.** The address of the Grantor's chief executive office and the office where it keeps its records respecting the Accounts and Book Debts (the "Head Office") is set out below the name of the Grantor on the signature page of this Agreement;

- (b) **Location of Collateral.** The Collateral which is goods is or will be located at the address set out on the signature page of this Agreement or at the locations specified in Schedule "A" hereto or such other locations as have been agreed to by the Bank in writing, except for (i) goods in transit to such locations and (ii) Inventory on lease or consignment, but including all fixtures, crops, oil, gas or other minerals to be extracted and all timber to be cut which forms part of the Collateral;
- (c) **Collateral Free and Clear.** The Collateral (other than Real Property) is the sole property of the Grantor free and clear of all security interests, liens, charges, mortgages, hypothecs, leases, licenses, infringements by third parties, encumbrances, statutory liens or trusts, other adverse claims or interests, or any rights of others, except for those security interests which are expressly approved by the Bank in writing prior to their creation or assumption;
- (d) **Amount of Accounts.** Each Account and Book Debt, Chattel Paper and Instrument constituting Collateral is enforceable in accordance with its terms against the party obligated to pay the same (the "Account Debtor") and the amount represented by the Grantor to the Bank from time to time as owing by each Account Debtor or by all Account Debtors will be the correct amount unconditionally owing by such Account Debtor or Account Debtors, and no Account Debtor will have any defence, set-off, claim or counterclaim against the Grantor which can be asserted against the Bank, whether in any proceeding to enforce Collateral or otherwise;
- (e) **Status and Binding Obligation.** The Grantor (i) if a corporation or company, has been duly incorporated, amalgamated or continued, as the case may be, and is validly existing as a corporation or company, as the case may be, under the laws of its jurisdiction of incorporation, amalgamation or continuance, as the case may be, (ii) if not a corporation or company, has been duly created or established as a partnership, limited partnership or other entity and validly exists under the laws of the jurisdiction in which it has been created or established, and (iii) is duly qualified to carry on business and own property in each jurisdiction where it carries on business or where any of its property is located. The Grantor has adequate power, capacity and authority to carry on its business, own property, borrow monies and enter into agreements therefor, execute and deliver this Agreement, and perform its obligations under this Agreement, which Agreement constitutes a legally valid and binding obligation of the Grantor enforceable in accordance with its terms. The making of this Agreement will not result in the breach of, constitute a default under, contravene any provision of, or result in the creation of, any lien, charge, security interest, encumbrance or any other rights of others upon any property of the Grantor pursuant to any agreement, indenture or other instrument to which the Grantor is a party or by which the Grantor or any of its property may be bound or affected; and
- (f) **Intellectual Property.** All intellectual property applications and registrations are valid, subsisting, unexpired, enforceable, in good standing and have not been abandoned and the Grantor is the owner of the applications and registrations.

5. Covenants

The Grantor covenants and agrees with the Bank that:

- (a) **Place of Business and Location of Collateral.** The Grantor shall not change its name or the location of its Head Office, amalgamate with any other Person, or move any of the Collateral from the address set out on the signature page of this Agreement or the locations specified in Schedule "A" hereto other than in accordance with clause 5(g), without the prior written consent of the Bank;
- (b) **Notification.** The Grantor shall notify the Bank promptly of: (i) any change in the information contained herein or in Schedule "A" hereto relating to the Grantor, the Grantor's business or Collateral; (ii) the details of any significant acquisition of Collateral; (iii) the details of any claims or litigation affecting the Grantor or the Collateral and will furnish the Bank with copies of the details of such claims or litigation; (iv) any loss or damage to Collateral or any material adverse change in the value of Collateral; and (v) any default by any Account Debtor in payment or other performance of its obligations with respect to Collateral;
- (c) **Performance of Obligations.** The Grantor shall observe and perform all its obligations under all material leases, licenses, undertakings and agreements to which it is a party, obtain and preserve its rights, powers, licences, privileges, franchises and goodwill thereunder, and comply with all applicable laws, by-laws, rules, regulations and ordinances in a proper and efficient manner so as to preserve and protect the Collateral and the business and undertaking of the Grantor in all material respects. The Grantor shall also pay all rents, taxes, rates, levies, assessments and government fees or dues levied, assessed or imposed in respect of the Collateral and other charges or any part thereof as and when the same become due and payable, and shall provide to the Bank, when requested, the receipts and vouchers evidencing payment;
- (d) **Limitations on Discounts, Extensions of Accounts and Compromises.** The Grantor shall not grant any extension of time for payment of any Accounts or Book Debts, or compromise, compound or settle any Accounts or Book Debts for less than the full amount, or release, wholly or partially, any Person liable for the payment of any Accounts or Book Debts, or allow any credit or discount of any Account or Book Debt, other than in the ordinary course of business of the Grantor and consistent with industry practices;

- (e) **Payment of Fees and Expenses.** The Grantor will pay the Bank on demand all costs, fees and expenses (including legal fees on a solicitor and his own client basis) incurred by the Bank in the preparation, execution, registration and perfection of this Agreement and the carrying out of any of the provisions of this Agreement, including, protecting and preserving the Security Interest and enforcing by legal process or otherwise the remedies provided herein. All such costs and expenses payable by the Grantor to the Bank shall bear interest from time to time at the highest interest rate then applicable to any of the Obligations, calculated and compounded monthly, and shall be added to and form part of the Obligations secured hereunder;
- (f) **Maintenance and Protection of Collateral/No Fixtures.** The Grantor shall care for, protect and preserve the Collateral and not permit its value to be impaired and will not permit the Collateral to be affixed to real or personal property so as to become a fixture or accession without the prior written consent of the Bank. The Grantor shall keep the Collateral in good order, condition and repair and shall not use the Collateral in violation of the provisions of this Agreement or any other agreement relating to the Collateral or any policy insuring the Collateral or any applicable statute, law, by-law, rule, regulation or ordinance. The Grantor will keep all licences, permits, agreements, registrations and applications relating to intellectual property used by Grantor in its business in good standing, unless otherwise agreed to in writing by the Bank. The Grantor shall apply to register all existing and future copyrights, trade-marks, patents, integrated circuit topographies and industrial designs whenever it is commercially reasonable to do so. The Grantor shall defend title to the Collateral against all claims and demands of all other Persons claiming the same or an interest therein and shall diligently initiate and prosecute legal action against every Person who infringes upon the Grantor's rights in intellectual property;
- (g) **Dealing with Collateral.** (i) The Grantor will not sell, lease, transfer, assign, deliver or otherwise dispose of the Collateral or any interest therein without the prior written consent of the Bank, except that the Grantor may, until an event of default as hereinafter provided occurs, deal with any Inventory or Real Property (other than fixtures financed by the Bank and any replacements or substitutions therefor) in the ordinary course of business so that the purchaser thereof takes title thereto free and clear of the Security Interest; (ii) All Proceeds shall continue to be subject to the Security Interest, granted hereby and all money received by the Grantor as Proceeds, other than from the sale of Inventory, shall be received as trustee for the Bank and shall be held separate and apart from other money of the Grantor, and shall be paid over to the Bank upon request; (iii) All money collected or received by the Bank in respect of the Collateral may be applied on account of such parts of the Obligations as the Bank in its sole discretion determines, or may be held unappropriated in a collateral account, or in the discretion of the Bank may be released to the Grantor, all without prejudice to the Bank's rights against the Grantor; (iv) Before an event of default occurs hereunder, the Bank may give notice of this Agreement and the Security Interest to any Account Debtor who is obligated to the Grantor under any of the Accounts and Book Debts and, after the occurrence of an event of default hereunder, may give notice to any such Account Debtor to make all further payments to the Bank, and any payment or other Proceeds received by the Grantor from an Account Debtor after an event of default whether before or after any notice is given by the Bank, shall be held by the Grantor in trust for the Bank and paid over to the Bank on request. The Bank shall have the right at any time and from time to time to verify the existence and state of the Collateral in any manner the Bank may consider appropriate and the Grantor agrees to furnish all assistance and information and to perform all such acts as the Bank may reasonably request in connection therewith and for such purpose to grant to the Bank or its agents access to all places where Collateral may be located and to all premises occupied by the Grantor;
- (h) **Maintenance of Records.** The Grantor will keep proper books of account in accordance with sound accounting practice and mark any and all such records and the Collateral at the Bank's request so as to indicate the Security Interest. The Grantor shall furnish to the Bank such financial information and statements and such information and statements relating to the Collateral as the Bank may from time to time require and shall permit the Bank or its agents at any time at the expense of the Grantor to examine the books of account and other financial records and reports relating to the Collateral and to make copies thereof and take extracts therefrom and to make inquiries of third parties for the purpose of verification of such information. The Grantor authorizes any Person holding any Books and Records to make them available, in a readable form, upon the request of the Bank. The Grantor will deliver to the Bank any Documents of Title, Instruments, Securities and Chattel Paper constituting, representing or relating to Collateral;
- (i) **Negative Pledge.** The Grantor will not create, incur, assume or suffer to exist, any mortgage, deed of trust, pledge, lien, security interest, assignment, charge, hypothec, encumbrance or statutory lien or trust (including any conditional sale, or other title retention agreement or finance lease) of any nature, on any of the Collateral (other than Real Property, but not including any fixtures financed by the Bank and any replacements or substitutions therefor) without the express prior written consent of the Bank;
- (j) **Insurance.** The Grantor will keep the Collateral insured under policies with such coverage, for such amounts and with such insurers as are satisfactory to the Bank from time to time, with loss thereunder, payable to the Bank and shall furnish the Bank with a copy of any policy of insurance, certificate of insurance or other evidence satisfactory to the Bank that such insurance coverage is in effect;
- (k) **Further Assurances.** The Grantor will from time to time forthwith, at the expense of the Grantor, duly authorize, execute and deliver such further instruments and documents, and take such further action, as the Bank may request for the purpose of obtaining or preserving the benefits of, and the rights and powers granted by, this Agreement (including the filing of any financing statements or financing change statements under any applicable legislation with respect to the Collateral) and for the purpose of correcting any deficiencies or clerical errors in this Agreement; and

- (l) **Landlord Agreement.** The Grantor will, at the request of the Bank, obtain a written agreement from each landlord of premises where any of the Collateral is located, in favour of the Bank and in form and substance satisfactory to the Bank, whereby such landlord agrees to give notice to the Bank of any default by the Grantor under the lease and a reasonable opportunity to cure such default prior to the exercise of any remedies by the landlord and acknowledges the Security Interest created by this Agreement and the right of the Bank to enforce the Security Interest created by this Agreement in priority to any claim of such landlord, including the right of the landlord to distrain on the Collateral for arrears of rent.

6. **Survival of Representations and Warranties and Covenants**

All agreements, representations, warranties and covenants made by the Grantor in this Agreement are material, will be considered to have been relied on by the Bank and will survive the execution and delivery of this Agreement or any investigation made at any time by or on behalf of the Bank and any disposition or payment of the Obligations until the indefeasible repayment and performance in full of the Obligations.

7. **Performance of Covenants by The Bank**

- (a) The Bank may, in its sole discretion and upon notice to the Grantor, perform any covenant of the Grantor under this Agreement that the Grantor fails to perform including any covenant the performance of which requires the payment of money, provided that the Bank will not be obligated to perform such covenant on behalf of the Grantor. The performance by the Bank of any such covenant shall not oblige the Bank to continue to perform any such covenant or other covenants nor relieve the Grantor from any default or derogate from the rights and remedies of the Bank under this Agreement. The Grantor agrees to indemnify and to reimburse the Bank for all costs and expenses incurred by the Bank in connection with the performance by it of any such covenant, and all such costs and expenses shall be payable by the Grantor to the Bank on demand, shall bear interest at the highest rate per annum applicable to any of the Obligations, calculated and compounded monthly, and shall be added to and form part of the Obligations.
- (b) In holding any Collateral, the Bank and any agent or nominee on its behalf is only bound to exercise the same degree of care as it would exercise with respect to similar property of its own or of similar value held in the same or similar location. The Bank and any agent or nominee on its behalf will be deemed to have exercised reasonable care with respect to the custody and preservation of the Collateral if it takes such action for that purpose as the Grantor reasonably requests in writing, but failure of the Bank or its nominees to comply with any such request will not of itself be deemed a failure to exercise reasonable care.

8. **Securities, Investment Property**

If Collateral at any time includes Securities, the Grantor authorizes the Bank to transfer all or any of such Securities into its own name or that of its nominee(s) so that the Bank or its nominee(s) may appear on record as the sole owner thereof; provided that, until default, the Bank shall deliver promptly to the Grantor all notices or other communications received by it or its nominee(s) as such registered owner and, upon demand and receipt of payment of any necessary expenses thereof, shall issue to the Grantor or its order a proxy to vote and take all action with respect to such Securities. After default, the Grantor waives all rights to receive any notices or communications received by the Bank or its nominee(s) as such registered owner and agrees that no proxy issued by the Bank to the Grantor or its order as aforesaid shall thereafter be effective.

Where any Investment Property is held in or credited to an account that has been established with a securities intermediary, the Bank may, at any time give a notice of exclusive control to any such securities intermediary with respect to such Investment Property.

The Grantor has not consented to and covenants that it will not consent to, the entering into of a Control Agreement by: (a) any issuer of any uncertificated securities included in or relating to the Collateral; or (b) any securities intermediary for any securities accounts or security entitlements included in or relating to the Collateral, other than, in either case, a Control Agreement to which the Bank is a party.

Promptly upon request from time to time by the Bank, the Grantor shall:

- (a) enter into and use reasonable commercial efforts to cause any securities intermediary for any securities accounts or securities entitlements included in or relating to the Collateral to enter into a Control Agreement with the Bank with respect to such securities accounts or securities entitlements as the Bank requires in form and substance satisfactory to the Bank; and
- (b) enter into and use reasonable commercial efforts to cause any issuer of any uncertificated securities included in or relating to the Collateral to enter into a Control Agreement with the Bank with respect to such uncertificated securities in form and substance satisfactory to the Bank.

9. **Dealing with Security Interest**

The Bank may grant extensions of time and other indulgences, give up any of the Security Interest, abstain from perfecting any of the Security Interest, accept compositions, grant releases and discharges and waive rights against and otherwise deal with the Grantor, Account Debtors of the Grantor, sureties and others and with any of the Collateral and any other security as the Bank may see fit without prejudice to the liability of the Grantor or the Bank's right to hold and realize any of the Security Interest. The Bank shall not be accountable to the Grantor for the value of any of the Security Interest released except for any moneys actually received by the Bank.

10. Deposits and Credit Balances

Without limiting any other rights or remedies of the Bank, the Bank may, without notice to the Grantor or any other Person, any notice being expressly waived by the Grantor, set-off and apply all or any of the amounts standing to or for the credit of the Grantor at the Bank or any of the Bank's affiliates, in any currency, against and on account of all or any part of the Obligations, all as the Bank may see fit, whether or not the Obligations or the amounts standing to or for the credit of the Grantor are due and payable. The Bank is authorized and shall be entitled to make such debits, credits, correcting entries, and other entries to the Grantor's accounts and the Bank's records relating to the Grantor as the Bank regards as desirable in order to give effect to the Bank's rights hereunder and the Grantor agrees to be bound by such entries absent manifest error. When applying a deposit or other obligation in a different currency than the Obligations to the Obligations, the Bank will convert the deposit or other obligation to the currency of the Obligations using the rate of exchange for the conversion of such currency as determined by the Bank or its agents and the Bank or its agent may earn revenue on such conversion.

11. Events of Default

Obligations not payable on demand shall, at the option of the Bank, become immediately due and payable upon the occurrence of one or more of the following events (each, an "event of default"):

- (a) the Grantor fails to pay when due, whether by acceleration or otherwise, any of the Obligations;
- (b) the Grantor fails to perform any provision of this Agreement or of any other agreement to which the Grantor and the Bank are parties;
- (c) if any certificate, statement, representation, warranty, audit report or financial statement heretofore or hereafter furnished by or on behalf of the Grantor pursuant to or in connection with this Agreement, or as an inducement to the Bank to extend any credit to or to enter into this or any other agreement with the Grantor, is shown to have been false in any material respect or to have omitted any material fact; or if upon the date of execution of this Agreement, there shall have been any material adverse change in any of the facts disclosed by any such certificate, representation, statement, warranty, audit report or financial statement, which change shall not have been disclosed to the Bank at or prior to the time of such execution;
- (d) the Grantor ceases or threatens to cease to carry on business, commits an act of bankruptcy, becomes insolvent, proceedings or other actions are taken by or against the Grantor under the *Bankruptcy and Insolvency Act (Canada)*, the *Companies' Creditors Arrangement Act (Canada)* or similar legislation whether in Canada or elsewhere, or the Grantor transfers all or substantially all of its assets to another Person;
- (e) a receiver, trustee, custodian or other similar official is appointed in respect of the Grantor or any of the Grantor's property;
- (f) the institution by or against the Grantor of any formal or informal proceeding for the dissolution or liquidation or settlement of claims against or winding up of affairs of the Grantor;
- (g) an encumbrancer takes possession of any of the Collateral or any process of execution or distress is levied or enforced upon or against any of the Collateral;
- (h) any indebtedness or liability of the Grantor, other than to the Bank, becomes due and payable, or capable of being declared due and payable, before the stated maturity thereof or any such indebtedness or liability shall not be paid at the maturity thereof or upon the expiration of any stated applicable grace period thereof, or the Grantor fails to make payment when due under any guarantee given by the Grantor;
- (i) if the Grantor is an individual, the Grantor dies or is found by a court to be incapable of managing his or her affairs;
- (j) an execution or any other process of any court shall become enforceable against the Grantor;
- (k) if the Grantor is a partnership, the death of a partner; or
- (l) any other event which causes the Bank, in good faith, to deem itself insecure;

and the Bank shall not be required to make any further advances or other extension of credit that constitutes an Obligation.

12. Remedies

- (a) Upon the occurrence of an event of default that has not been cured or waived, the Bank, in addition to any right or remedy otherwise provided herein or by law or in equity, will have the rights and remedies set out below, which may be enforced successively or concurrently:
 - (i) to take such steps as the Bank considers desirable to maintain, preserve or protect the Collateral or its value;

- (ii) to take possession of the Collateral and require the Grantor to assemble the Collateral and deliver or make the Collateral available to the Bank at such place as may be specified by the Bank, and the Bank will not be or be deemed to be a mortgagee in possession by virtue of any such actions;
 - (iii) to exercise and enforce all rights and remedies of the Grantor with respect to the Collateral, including collecting and realizing upon all Accounts and Book Debts;
 - (iv) to carry on or concur in carrying on all or any part of the business of the Grantor;
 - (v) for the maintenance, preservation or protection of the Collateral or for carrying on any of the business of the Grantor, to borrow money on the security of the Collateral, which security will rank in priority to the Security Interest, or on an unsecured basis;
 - (vi) to the exclusion of all others, including the Grantor, to enter upon, occupy and use all or any of the premises, buildings and plants owned or occupied by the Grantor and use all or any of the Collateral of the Grantor for such time as the Bank requires to facilitate the preservation and realization of the Collateral, free of charge, and the Bank will not be liable to the Grantor for any neglect in so doing or in respect of any rent, charges, depreciation or damages in connection with such actions;
 - (vii) to sell, lease, license or otherwise dispose of or concur in selling, leasing, licensing or otherwise disposing of the Collateral upon such terms and conditions as the Bank may determine;
 - (viii) to dispose of any of the Collateral in the condition in which it was at the date possession of it was taken, or after any commercially reasonable repair, processing or preparation thereof for disposition;
 - (ix) if any part of the Collateral is perishable or will decline speedily in value, to sell or otherwise dispose of same without giving any notice of such disposition;
 - (x) to make any arrangement or compromise which the Bank shall think expedient in the interests of the Bank, including compromising any Accounts and Book Debts, and giving time for payment thereof with or without security;
 - (xi) to appoint a consultant or monitor, at the Grantor's expense, to evaluate the Grantor's business and the value of the Collateral, and to review the options available to the Bank; and
 - (xii) to appoint or reappoint by instrument in writing any person or persons, whether an officer or officers or employee or employees of the Bank or not, to be a receiver or receivers or a receiver and manager of the Collateral and remove or replace any person or persons so appointed or apply to any court for the appointment of a receiver or receiver and manager (each hereinafter called a "Receiver").
- (b) Any Receiver so appointed shall be deemed to be the agent of the Grantor and not the Bank, and the Grantor and not the Bank, shall be solely responsible for the Receiver's acts or defaults and for the Receiver's remuneration and expenses. The Bank shall not be in any way responsible for any misconduct, negligence or failure to act on the part of any such Receiver, its servants, agents or employees.
- (c) The Grantor agrees to pay all costs, charges and expenses incurred by the Bank or any Receiver appointed by the Bank, whether directly or for services rendered (including reasonable legal and auditors' costs and expenses and Receiver remuneration), in operating the Grantor's accounts, in preparing or enforcing this Agreement, taking and maintaining custody of, preserving, repairing, processing, preparing for disposition and disposing of Collateral and in enforcing or collecting the Obligations, and all such costs, charges and expenses, together with any amounts owing as a result of any borrowing by the Bank or any Receiver appointed by the Bank, as permitted hereby, shall be a first charge on the Collateral and shall be secured hereby.
- (d) The Bank will give the Grantor such notice, if any, of the date, time and place of any public sale or of the date after which any private disposition of Collateral is to be made as may be required by the PPSA.
- (e) Upon default and receiving written demand from the Bank, the Grantor agrees to take such further action as may be necessary to evidence and effect an assignment or licensing of intellectual property to whomever the Bank directs, including to the Bank. The Grantor appoints any officer or employee of the Bank to be its attorney in accordance with applicable legislation with full power of substitution, to do on the Grantor's behalf anything that is required to assign, license or transfer, and to record any assignment, license or transfer of the Collateral. This power of attorney, which is coupled with an interest, is irrevocable until the release or discharge of the Security Interest.
- (f) The Grantor authorizes the Bank to file such financing statements, financing change statements and other documents and do such acts, matters and things (including completing and adding schedules hereto identifying any Collateral or identifying the locations at which the Collateral is located and correcting any clerical errors or deficiencies in this Agreement) as the Bank may deem appropriate to perfect on an ongoing basis and continue the Security Interest, to protect and preserve Collateral and to realize upon the Security Interest. The Grantor hereby irrevocably constitutes and appoints the Bank and any of its officers or employees from time to time as the true and lawful attorney of the Grantor, with full power of substitution, to do any of the foregoing in the name of the Grantor whenever and wherever it may be deemed necessary or

expedient. This power of attorney, which is coupled with an interest, is irrevocable until the release or discharge of the Security Interest.

If the disposition of the Collateral fails to satisfy the Obligations secured by this Agreement including the expenses incurred by the Bank in connection with the preservation and realization of the Collateral as described above, the Grantor shall be liable to pay any deficiency to the Bank forthwith on demand.

13. Environmental License and Indemnity

The Grantor hereby grants to the Bank and its officers, employees and agents an irrevocable and non-exclusive license, subject to the rights of tenants, to enter any Real Property to conduct investigations, inspections, audits, testing and monitoring with respect to any contaminants or hazardous substances and to remove and analyze samples of any contaminants or hazardous substances at the cost and expense of the Grantor (which cost and expense will form part of the Obligations and will be payable immediately on demand and secured hereby). The Grantor hereby indemnifies and will indemnify the Bank and agrees to hold the Bank harmless against and from all losses, fines, penalties, costs, damages and expenses which the Bank may sustain, incur or be held to be or for which it may become liable, at any time whatsoever for or by reason of or arising from the past, present or future presence of or, clean-up, removal or disposal of any contaminants or hazardous substances from, on, under or adjacent to any Real Property owned by the Grantor or which may become owned or occupied by the Bank or as a result of the Bank's compliance with environmental laws or environmental orders relating thereto, including any clean-up, decommissioning, restoration or remediation of any Real Property owned or occupied by the Grantor or other affected or adjacent lands or property. This indemnification will survive the satisfaction, release or extinguishment of the Obligations created hereby

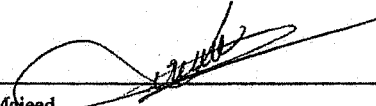
14. Miscellaneous

- (a) **Interpretation.** The division of this Agreement into Sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. The terms "this Agreement", "hereof", "hereunder" and similar expressions refer to this Agreement (including any schedule now or hereafter annexed hereto) and not to any particular Section or other portion hereof. Unless otherwise specified, any reference herein to a Section or Schedule refers to the specified Section of or Schedule to this Agreement. In this Agreement: (i) words importing the singular number only shall include the plural and vice versa and words importing the masculine gender shall include the feminine and neuter genders and vice versa; (ii) the words "include", "includes" and "including" mean "include", "includes" or "including", in each case, "without limitation"; (iii) reference to any agreement or other instrument in writing means such agreement or other instrument in writing as amended, modified, replaced or supplemented from time to time; (iv) unless otherwise indicated, time periods within which a payment is to be made or any other action is to be taken hereunder shall be calculated excluding the day on which the period commences and including the day on which the period ends; and (v) whenever any payment to be made or action to be taken hereunder is required to be made or taken on a day other than a Business Day, such payment shall be made or action taken on the next following Business Day.
- (b) **Successors and Assigns.** This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and permitted assigns. In any action brought by an assignee of this Agreement and the Security Interest or any part thereof to enforce any rights hereunder, the Grantor shall not assert against the assignee any claim or defence which the Grantor now has or hereafter may have against the Bank.
- (c) **Amalgamation.** The Grantor acknowledges and agrees that in the event it amalgamates with any other company or companies it is the intention of the parties hereto that the term "Grantor" when used herein shall apply to each of the amalgamating companies and to the amalgamated company, such that the Security Interest granted hereby (i) shall extend to "Collateral" (as that term is herein defined) in which any amalgamating company has any rights at the time of amalgamation and to any "Collateral" in which the amalgamated company thereafter has any rights, and (ii) shall secure the "Obligations" (as that term is herein defined) of each of the amalgamating companies and the amalgamated company to the Bank at the time of amalgamation and any "Obligations" of the amalgamated company to the Bank thereafter arising.
- (d) **Joint and Several.** If there is more than one Grantor named herein, the term "Grantor" shall mean all and each of them, their obligations under this Agreement shall be joint and several, the Obligations shall include those of all or any one of them and no Grantor shall have the right of subrogation, exoneration, reimbursement or indemnity whatsoever and no right of recourse to the Collateral for the Obligations hereunder unless and until all of the Obligations have been paid or performed in full, notwithstanding any change for any cause or in any manner whatsoever in the composition of or membership of any firm or company which is a party hereto.
- (e) **Attachment of Security Interest.** The Grantor acknowledges that value has been given and that the Security Interest granted hereby will attach when the Grantor signs this Agreement and will attach to Collateral in which the Grantor subsequently acquires any rights, immediately upon the Grantor acquiring such rights. The parties do not intend to postpone the attachment of any Security Interest created by this Agreement.

- (f) **No Obligation to Advance.** Neither the execution of this Agreement nor any advance of funds shall oblige the Bank to advance any funds or any additional funds or enter into any transaction or renew any note or extend any time for payment of any of the Obligations of the Grantor to the Bank.
- (g) **Information.** The Bank may provide any financial and other information it has about the Grantor, the Security Interest and the Collateral to any one acquiring or who may acquire an interest in the Security Interest or the Collateral from the Bank or anyone acting on behalf of the Bank.
- (h) **Assignment.** The Bank may assign or transfer any of its rights under this Agreement without the consent of the Grantor. The Grantor may not assign its obligations under this Agreement without the prior written consent of the Bank.
- (i) **Amendment.** Subject to Section 12(f) of this Agreement, no amendment to this Agreement will be valid or binding unless set forth in writing and duly executed by all of the parties hereto. No course of conduct by the Bank will be deemed to result in an amendment of this Agreement.
- (j) **Term.** This Agreement shall be a continuing agreement in every respect for the payment of the Obligations and it shall remain in full force and effect until all of the Obligations shall be indefeasibly paid in full or discharged by the Bank and until the Bank shall no longer have any commitment to the Grantor or any other Person, the fulfillment of which, might result in the creation of Obligations of the Grantor.
- (k) **Severability.** If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable in any respect, such invalidity or unenforceability will not affect the validity or enforceability of the remaining provisions of this Agreement.
- (l) **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the jurisdiction where the Branch of the Bank is located.
- (m) **Waiver by the Bank.** No delay or omission by the Bank in exercising any right or remedy hereunder or with respect to any Obligations shall operate as a waiver thereof or of any other right or remedy, and no single or partial exercise thereof shall preclude any other or further exercise thereof or of any other right or remedy. Furthermore, the Bank may remedy any default by the Grantor hereunder or with respect to any Obligations in any reasonable manner without waiving the default remedied and without waiving any other prior or subsequent default by the Grantor. No course of conduct of the Bank will give rise to any reasonable expectation which is in any way inconsistent with the terms and conditions of this Agreement or the Bank's rights hereunder. All rights and remedies of the Bank granted or recognized herein are cumulative and may be exercised at any time and from time to time independently or in combination.
- (n) **Waiver by the Grantor.** The Grantor waives protest of any Instrument constituting Collateral at any time held by the Bank on which the Grantor is in any way liable and, subject to clause 12(d) hereof, notice of any other action taken by the Bank.
- (o) **Non-Substitution.** The Security Interest is in addition to and not in substitution for any other security now or hereafter held by the Bank.
- (p) **Entire Agreement.** This Agreement including any schedule now or hereafter annexed hereto, constitutes the entire agreement between the Grantor and the Bank with respect to the subject matter hereof. There are no representations, warranties, terms and conditions, undertakings or collateral agreements, express, implied or statutory, between the parties except as expressly set forth in this Agreement.
- (q) **Acknowledgment.** The Grantor acknowledges receipt of a fully executed copy of this Agreement and, to the extent permitted by applicable law, waives the right to receive a copy of any financing statement, financing change statement or verification statement in respect of any registered financing statement or financing change statement prepared, registered or issued in connection with this Agreement.
- (r) **Execution.** The Grantor agrees that this Agreement may be executed electronically and in counterparts.

IN WITNESS WHEREOF the Grantor has executed this Agreement this 4 day of July, 2022.

MALAKAND PETROLEUM INC.

Per: 
Name: Fazle Majed
Title: President and Secretary
I have the authority to bind the corporation.

SCHEDULE "A"

DESCRIPTION OF EQUIPMENT/SERIAL NUMBERED GOODS

QUANTITY

DESCRIPTION

SERIAL NUMBER

LOCATION OF COLLATERAL

The Collateral is now and will hereafter be located at the following address(es) (include Street/Town/City and Province):
12 Guelph Street West, Halton Hills ON and 1228 Raspberry Terrace, Milton, Ontario, Canada, L9E 1N1

SPECIFIED COLLATERAL (Ontario only)

Quota/Licence No. _____ issued by _____ (including any successor marketing board or licencing authority in respect of marketing or setting prices for the same commodity, their successors and assigns, in each case called the "Board") and proceeds therefrom.

Additional Covenants of Customer Applicable to Above Collateral:

1. By executing this Agreement, Grantor has granted an assignment to the Bank of any and all rights of the Grantor in and to the above quota/licence, any amendments, substitutions, additions or supplements thereto, and any proceeds thereof.
2. Grantor agrees to maintain all of the above quota/licence rights in good standing and to comply with all of the rules, regulations and orders of the Board issuing such quota/licence.
3. Grantor agrees not to apply to the Board for the transfer of the above quota/licence, in whole or in part, without the prior written consent of the Bank.
4. The security and/or rights hereby granted shall extend to and include all present and future acquired quota/licence rights issued by the Board to the Grantor, whether issued under the above quota/licence number of under any other such number.

RESOLUTION AUTHORIZING EXECUTION OF GENERAL SECURITY AGREEMENT

"RESOLVED THAT:

- (a) The President and the Secretary are hereby authorized for and on behalf of the Corporation to execute and deliver to The Toronto-Dominion Bank a General Security Agreement substantially in the form of the General Security Agreement (attached hereto and initialled by the Secretary for identification) presented to the directors, with such alterations, amendments, deletions or additions as may be approved by the persons executing the same and their execution shall be conclusive evidence of such approval and that the General Security Agreement so executed is the General Security Agreement authorized by this Resolution.

- (b) Any officer or director be and is hereby authorized to execute and deliver on behalf of the Corporation all such other documents and writings and to do such other acts and things as may be necessary or desirable for fulfilling the Corporation's obligations under the General Security Agreement."

CERTIFICATE

I hereby certify that the foregoing is a true and correct copy of a Resolution duly passed by the Directors of MALAKAND PETROLEUM INC.

on the 4 day of July, 2022 and that the said Resolution is now in full force and effect.



Secretary Fazle Majeed C/S

Exhibit “E”



This Guarantee is made as of the 4th day of July, 2022.

Whereas the undersigned (each hereinafter referred to as the "Guarantor") has agreed to provide The Toronto-Dominion Bank (hereinafter referred to as the "Bank") with a guarantee of the Obligations (as hereinafter defined) of MALAKAND PETROLEUM INC. (the "Customer");

And whereas the Guarantor has agreed that if the guarantee herein is not enforceable, the Guarantor will indemnify the Bank or be liable as primary obligor.

NOW THEREFORE, in consideration of the Bank dealing with the Customer now or in the future and/or for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Guarantor agrees with the Bank as follows:

1. Obligations Guaranteed

The Guarantor unconditionally and irrevocably guarantees payment of all debts and liabilities, present or future, direct or indirect, absolute or contingent, matured or not, wheresoever and howsoever incurred of the Customer to the Bank, whether arising from dealings between the Bank and the Customer or from other dealings or proceedings by which the Bank may be or become in any manner whatsoever a creditor of the Customer, in any currency, whether incurred by the Customer alone or jointly with another or others and whether as a indemnitor or surety, including interest thereon and all amounts owed by the Customer for fees, costs and expenses (collectively referred to as the "Obligations").

2. Extent of Guarantor's Liability

This is an unlimited Guarantee and the Guarantor's liability to the Bank under this Guarantee shall not be limited as to amount.

3. Indemnity/Primary Obligation

If (i) any Obligations are not duly paid by the Customer and are not recoverable under Section 1 for any reason, the Guarantor will, as a separate and distinct obligation, indemnify and save harmless the Bank from and against all losses resulting from the failure of the Customer to pay such Obligations, and (ii) any Obligations are not duly paid by the Customer and are not recoverable under Section 1 or the Bank is not indemnified under clause (i) above of this Section 3, for any reason, such Obligations will, as a separate and distinct obligation, be paid by and recoverable from the Guarantor as primary obligor.

The liabilities of the Guarantor under Section 1 and each of clauses (i) and (ii) of this Section 3 are separate and distinct from each other, but the provisions of this Agreement shall apply to each of such liabilities unless the context otherwise requires.

4. Nature of Guarantor's Liability

The liability of the Guarantor under this Guarantee is continuing, absolute and unconditional and will not be affected by any act, omission, event or circumstance that might constitute a legal or equitable defence (any and all such legal and equitable defences are hereby expressly waived by the Guarantor) to or a discharge, limitation or reduction of the liability of the Guarantor hereunder, other than as a result of the indefeasible payment in full of the Obligations, including:

- (a) the unenforceability of any of the Obligations for any reason, including as a result of the act of any governmental authority;

- (b) any irregularity, fraud, illegality, defect or lack of authority or formality in incurring the Obligations, notwithstanding any inquiry that may or may not have been made by the Bank;
- (c) failure of the Bank to comply with or perform any agreements relating to the Obligations;
- (d) any discontinuance, renewal, extension, increase or reduction in the amount, or any other variance of any loans or credits now or hereafter made available to the Customer by the Bank or guaranteed by the Customer to the Bank or any other change to any of the terms or conditions of any of the Obligations (including, without limitation, respecting rates of interest, fees or charges, maturity dates), or any waiver by the Bank respecting any of the Obligations;
- (e) the taking of or the failure by the Bank to take a guarantee from any other person;
- (f) any release, compromise, settlement or any other dealing with any person, including any other Guarantor;
- (g) the reorganization of the Customer or its business (whether by amalgamation, merger, transfer, sale or otherwise); and in the case of an amalgamation or merger, the liability of the Guarantor shall apply to the Obligations of the resulting or continuing entity and the term "Customer" shall include such resulting or continuing entity;
- (h) the current financial condition of the Customer and any change in the Customer's financial condition;
- (i) any change in control or ownership of the Customer, or if the Customer is a general or limited partnership, any change in the membership of that partnership or other entity;
- (j) any change in the name, articles or other constating documents of the Customer, or its objects, business or capital structure;
- (k) the bankruptcy, winding-up, dissolution, liquidation or insolvency of the Customer or any proceedings being taken by or against the Customer with respect thereto, and any stay of or moratorium on proceedings by the Bank against the Customer as a result thereof;
- (l) a breach of any duty of the Bank (whether fiduciary or in negligence or otherwise) and whether owed to the Guarantor, the Customer or any other person;
- (m) any lack or limitation of power, capacity or legal status of the Customer, or, if the Customer is an individual, the death of the Customer;
- (n) the Customer's account being closed or the Bank ceasing to deal with the Customer;
- (o) any taking or failure to take any security by the Bank, any loss of or diminution in value of any security, the invalidity, unenforceability, subordination, postponement, release, discharge or substitution, in whole or in part, of any security, or the failure to perfect or maintain perfection or enforce any security; or
- (p) any failure or delay by the Bank in exercising any right or remedy respecting the Obligations or under any security or guarantee.

5. Continuing Guarantee

The obligations of the Guarantor hereunder will constitute and be continuing obligations and will apply to and secure any ultimate balance due or remaining due to the Bank and will not be considered as wholly or partially satisfied by the payment or liquidation at any time of any sum of money for the time being due or remaining unpaid to the Bank. This Guarantee will continue to be effective even if at any time any payment of any of the Obligations is rendered unenforceable or is rescinded or must otherwise be returned by the Bank as a result of the occurrence of any action or event, including the insolvency, bankruptcy or reorganization of the Customer or the Guarantor, all as though such payment had not been made.

6. Demand for Payment

The Guarantor shall make payment to the Bank under this Guarantee immediately upon receipt of a written demand for payment from the Bank. If any Obligation is not paid by the Customer when due, the Bank may treat all Obligations as due and payable by the Customer and may demand immediate payment under this Guarantee of all or some of the Obligations whether such other Obligations would otherwise be due and payable by the Customer at such time or whether or not any demands, steps or proceedings have been made or taken by the Bank against the Customer or any other person respecting all or any of the Obligations. If any stay of or moratorium on proceedings by the Bank against the Customer is imposed in respect of any Obligation, the Bank may nevertheless demand immediate payment of such Obligation from the Guarantor as if such Obligation was due and payable by the Customer.

7. Interest

If the Guarantor does not make immediate payment in full of the Obligations when demand for payment has been made by the Bank, the Guarantor shall pay interest on any unpaid amount to the Bank at the highest rate of interest per annum that is charged on any Obligations for which payment has been demanded hereunder and which remain unpaid.

8. State of Account

The records of the Bank in respect of the Obligations will be prima facie evidence of the balance of the amount of the Obligations that are due and payable by the Customer to the Bank.

9. Application of Moneys Received

The Bank may, without notice and demand of any kind and at any time, apply any money received from the Guarantor, the Customer or any other person (including arising from any security that the Bank may from time to time hold) or any balance in any account of the Guarantor held at the Bank or any of the Bank's affiliates, to such part of the Obligations, whether due or to become due, as the Bank in its sole and absolute discretion considers appropriate, or may, in its sole and absolute discretion, refrain from applying any such money. The Bank may also revoke and alter any such application in whole or in part. If any amount that is to be applied is in a currency other than the currency of the Obligation to which such amount is to be applied, then the amount that is applied shall be converted from one currency to another using the rate of exchange for the conversion of such currency as determined by the Bank or its agents and the Bank or its agent may earn revenue on such conversion.

10. No Set-off or Counterclaim

The Guarantor will make all payments required to be made under this Guarantee without claiming or asserting any right of setoff or counterclaim that the Guarantor has or may have against the Customer or the Bank, all of which rights the Guarantor waives.

11. Exhausting Recourse

The Bank is not required to take any proceedings, exhaust its recourse against the Customer or any other Guarantor or person or under any security the Bank may from time to time hold, or take any other action, before being entitled to demand payment from the Guarantor under this Guarantee, and the Guarantor waives all benefits of discussion and division.

12. No Representations

There are no representations, warranties, terms, conditions, undertakings or collateral agreements, express, implied or statutory, between the parties except as expressly set forth herein. The Bank will not be bound by any representations or promises made by Customer to the Guarantor and possession of this Guarantee by the Bank will be conclusive evidence against the Guarantor that this Guarantee was not delivered in escrow or pursuant to any agreement that it should not be effective until any condition precedent or subsequent has been complied with, and this Guarantee will be binding on each Guarantor who has signed this Guarantee notwithstanding the non-execution thereof by any proposed guarantor.

13. Postponement and Assignment

The Guarantor hereby postpones payment of all present and future debts and liabilities of the Customer to the Guarantor, and as security for payment of the Obligations, the Guarantor hereby assigns such debts and liabilities to the Bank and agrees that all moneys received from the Customer by or on behalf of the Guarantor shall be held in trust for the Bank and forthwith upon receipt paid over to the Bank, all without prejudice to and without in any way limiting or lessening the liability of the Guarantor to the Bank under this Guarantee. This assignment and postponement is independent of the guarantee, indemnity and primary obligor obligations contained in this Guarantee and will remain in full force and effect until, in the case of the assignment, the liability of the Guarantor under this Guarantee has been discharged or terminated and, in the case of the postponement, until all Obligations are performed and indefeasibly paid in full.

14. Subrogation

The Guarantor will not be entitled to be subrogated to the rights of the Bank against the Customer, to be indemnified by the Customer or to claim contribution from any other Guarantor until the Guarantor makes indefeasible payment to the Bank of all amounts owing by the Guarantor to the Bank under this Guarantee and the Obligations are indefeasibly paid in full.

15. Bankruptcy of Customer

Upon the bankruptcy or winding up or other distribution of assets of the Customer or of any surety or Guarantor for the Obligations, the Bank's rights shall not be affected by the Bank's failure to prove its claim and the Bank may prove such claim if and in any manner as it deems appropriate in its sole discretion. The Bank may value as it sees fit or refrain from valuing any security held by the Bank without in any way releasing, reducing or otherwise affecting the liability of the Guarantor to the Bank, and until all the Obligations of the Customer to the Bank have been indefeasibly paid in full, the Bank shall have the right to include in its claim the amount of all sums paid by the Guarantor to the Bank under this Guarantee and to prove and rank for and receive dividends in respect of such claim, any and all right to prove and rank for such sums paid by the Guarantor and to receive the full amount of all dividends in respect thereto being hereby assigned and transferred to the Bank.

16. Costs and Expenses

The Guarantor agrees to pay all costs and expenses, including legal fees, of enforcing this Guarantee including the charges and expenses of the Bank's in-house lawyers. The Guarantor will pay all legal fees on a solicitor and own client basis.

17. Other Guarantees and Security

The liability of the Guarantor under any other guarantee or guarantees given to the Bank in connection with the Obligations shall not be affected by this Guarantee, nor shall this Guarantee affect or be affected by the endorsement by the Guarantor of any note or notes of the Customer, the intention being that the liability of the Guarantor under such other guarantee or guarantees and this Guarantee, and under such other note or notes and this Guarantee, shall be cumulative. Nor shall the Bank be required to marshal in favour of the Guarantor other guarantees granted by other persons or any security, money or other property that the Bank may be entitled to receive or may have a claim upon.

18. Amendment and Waivers

No amendment to this Guarantee will be valid or binding unless set forth in writing and duly executed by the Guarantor and the Bank. No waiver by the Bank of any breach of any provision of this Guarantee will be effective or binding unless made in writing and signed by the Bank and, unless otherwise provided in the written waiver, will be limited to the specific breach waived. No delay in the exercise of any right or remedy by the Bank shall operate as a waiver thereof. No failure to exercise a right or remedy or partial exercise of a right or remedy by the Bank shall preclude other or further exercise thereof or the exercise of any other right or remedy by the Bank.

19. Discharge

The Guarantor will not be released or discharged from its obligations hereunder except by a written release or discharge signed by the Bank.

20. General

This Guarantee shall be binding on the successors of the Guarantor or, if the Guarantor is an individual, the heirs, executors, administrators and other legal representatives of the Guarantor, and shall enure to the benefit of the successors and assigns of the Bank.

If more than one Guarantor has signed this Guarantee, each Guarantor shall be jointly and severally liable under this Guarantee.

To the extent that any limitation period applies to any claim for payment hereunder of the Obligations or remedy for the enforcement of such payment, the Guarantor agrees that any such limitation period is excluded or waived, but if such exclusion and waiver is not permitted by applicable law, then any limitation period is extended to the maximum length permitted by applicable law.

Any notice or demand which the Bank may wish to give under this Guarantee may be personally served on the Guarantor or sent by ordinary mail or electronic mail to the last known address of the Guarantor. Any notice that is sent by ordinary mail shall be conclusively deemed to have been received on the fifth day following the day on which it is mailed. Any notice that is sent by electronic mail shall be conclusively deemed to have been received on the day it is sent.

If any provision of this Guarantee is determined by any court of competent jurisdiction to be invalid or unenforceable in any respect, such invalidity or unenforceability will not affect the validity or enforceability of the remaining provisions of this Guarantee.

This Guarantee shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

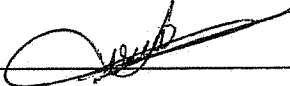
Any word herein contained importing the singular number shall include the plural and any word importing a person shall include a corporation, partnership, firm and any other entity.

Subject to Section 17, this Guarantee constitutes the entire agreement between the Guarantor and the Bank with respect to the subject matter hereof and cancels and supersedes any prior understandings and agreements between the parties with respect thereto.

Each of the undersigned acknowledges receipt of a copy of this Guarantee.

Witness Name: Ahmed Inam

Personal Guarantee

Signature of Guarantor: 

Print name: Fazle Majeed

Signature 

Exhibit “F”

Properties

PIN 24992 - 0323 LT *Interest/Estate* Fee Simple
Description LT 5, PL 438; PT LT 6, PL 438, AS IN 515429; ALSO SHOWN ON PL 1098; TOWN OF HALTON HILLS
Address 12 GUELPH ST W
 HALTON HILLS

Chargor(s)

The chargor(s) hereby charges the land to the chargee(s). The chargor(s) acknowledges the receipt of the charge and the standard charge terms, if any.

Name MALAKAND PETROLEUM INC.
Address for Service 1228 Raspberry Terr,
 Milton, Ontario,
 L9E 1N1

A person or persons with authority to bind the corporation has/have consented to the registration of this document.
 This document is not authorized under Power of Attorney by this party.

Chargee(s) *Capacity* *Share*

Name THE TORONTO-DOMINION BANK
Address for Service 20 Milverton Dr
 Mississauga, ON
 L5R 3G2

Statements

Schedule: See Schedules

Provisions

Principal \$2,300,000.00 *Currency* CDN
Calculation Period SEE SCHEDULE 1
Balance Due Date
Interest Rate SEE SCHEDULE 1
Payments
Interest Adjustment Date
Payment Date ON DEMAND
First Payment Date
Last Payment Date
Standard Charge Terms 8520
Insurance Amount See standard charge terms
Guarantor

Signed By

Shellisa Bhagwandin 800-150 York St. acting for Signed 2022 07 06
 Toronto
 M5H 3S5
 Chargor(s)

Tel 416-364-1553
 Fax 416-364-1453

I have the authority to sign and register the document on behalf of the Chargor(s).

Submitted By

Macdonald Sager LLP 800-150 York St. 2022 07 18
 Toronto
 M5H 3S5

Tel 416-364-1553
 Fax 416-364-1453

Fees/Taxes/Payment

| | |
|----------------------------|---------|
| Statutory Registration Fee | \$66.30 |
| Total Paid | \$66.30 |

File Number

Chargee Client File Number : 221728



Additional Property Identifier(s) and/or Other Information

This is a Schedule to a Charge made between
MALAKAND PETROLEUM INC.
and THE TORONTO-DOMINION BANK.

Box (9)(b) The Chargor hereby agrees to pay interest on the Principal Amount at the following Interest Rate:

- the Bank's Prime Rate plus 5 % per annum. "Prime Rate" means the rate of interest per annum established and reported by the Bank to the Bank of Canada from time to time as a reference rate of interest for the determination of interest rates that the Bank charges to customers of varying degrees of credit worthiness in Canada for Canadian dollar loans made by it in Canada.

Box (9)(c) Interest at the Interest Rate aforesaid is calculated and payable monthly, not in advance, before and after demand, default and judgment. Interest is payable on overdue interest and on Indebtedness payable under this Charge at the aforesaid Interest Rate. Any payment appropriated as a permanent reduction of this Charge shall be first applied against interest accrued hereunder.

Exhibit “G”

This set of **STANDARD CHARGE TERMS** shall be deemed to be included in every Charge in which the set is referred to by its filing number, as provided in section 9 of the above Act.

1. Definitions

In this set of Standard Charge Terms:

- (a) **Bank** means The Toronto-Dominion Bank.
- (b) **Charge** means this Charge/Mortgage of Land made pursuant to the Land Registration Reform Act, 1984 and any amendments thereto, to which the Chargor and the Chargee are parties and which is dated as of the Date of Signature of the first named Chargor who signs the Charge.
- (c) **Chargee** means the Bank.
- (d) **Chargor** means each Chargor described in this Charge.
- (e) **Costs** means the fees, costs, charges and expenses of the Bank of and incidental to:
 - (i) the preparation, execution and registration of the Charge and any other instruments connected herewith;
 - (ii) the collection, enforcement, realization of the security herein contained;
 - (iii) procuring payment of the Indebtedness due and payable hereunder, including foreclosure, power of sale or execution proceedings commenced by the Bank or any other party;
 - (iv) any inspection required to be made of the Property;
 - (v) all necessary repairs required to be made to the Property;
 - (vi) the Bank's having to go into possession of the Property and secure, complete and equip the building or buildings in any way in connection therewith;
 - (vii) the Bank's renewal of any leasehold interest;
 - (viii) the exercise of any of the powers of a receiver contained herein; and
 - (ix) all solicitor's costs, costs and expenses of any necessary examination of the title to and of valuation of the Property.Costs shall:
 - (i) extend to and include legal costs incurred by the Bank as between solicitor and his own client;
 - (ii) be payable forthwith by the Chargor; and
 - (iii) be a charge on the Property.
- (f) **Fixtures** include, but are not limited to, furnaces, boilers, oil burners, stokers, water heaters, electric light fixtures, screen and storm doors and windows, air conditioning, plumbing, cooling and heating equipment and all apparatus and equipment appurtenant to the Property.
- (g) **Indebtedness** means all monies and liabilities matured or not, whether present or future, direct or indirect, absolute or contingent, now or at any time hereafter owing or incurred, wheresoever or howsoever incurred from or by the Chargor, as principal or surety, whether alone or jointly with any other person and in whatever name style or firm, whether otherwise secured or not and whether arising from dealings between the Bank and the Chargor or from other dealings or proceedings by which the Bank may become a creditor of the Chargor including, without limitation, advances upon overdrawn accounts or upon bills of exchange, promissory notes or other obligations discounted for the Chargor or otherwise, all bills of exchange, promissory notes and other obligations negotiable or otherwise representing money and liabilities, or any portion thereof, now or hereafter owing or incurred from or by the Chargor and all interest, damages and Costs, and all premiums of insurance upon the buildings, Fixtures and improvements now or hereafter brought or erected upon the said Property which may be paid by the Bank and Taxes.
- (h) **Interest Rate** means the Interest Rate set out in Schedule 1 to this Charge.
- (i) **Principal Amount** means the Principal Amount in lawful money of Canada set out in this Charge.
- (j) **Property** means the property identified in this Charge by the Property Identifier(s) and described in the Description therein and in a Schedule to this Charge, if required, and includes all buildings, Fixtures and improvements now or hereafter brought or erected thereon.

- (k) **Spouse of Chargor** means each Spouse of Chargor described in this Charge.
- (l) **Taxes** means all taxes, rates and assessments, municipal, local, parliamentary or otherwise.

If the Property is a condominium unit, the following definitions apply:

- (m) **Condominium Corporation** means the Condominium Corporation which was created by the registration of the Declaration and the description relating thereto of which the Property hereby charged constitutes a part.
- (n) **Common Expenses** means the expenses of the performance of the objects and duties of the Condominium Corporation and any expenses specified as common expenses in the Condominium Act (Ontario), as amended from time to time or in the Declaration.
- (o) **Declaration** means the Declaration which, together with a description, was registered pursuant to the Condominium Act, to create the Condominium Corporation.

2. Charge of Property

The Chargor has, at the request of the Bank, agreed to give this Charge as a CONTINUING COLLATERAL SECURITY for payment to the Bank ON DEMAND of the Indebtedness, provided that such security be limited to the Principal Amount plus Costs with interest thereon at the Interest Rate. Interest at the Interest Rate is calculated and payable monthly, not in advance, before and after demand, default and judgment, with interest on overdue interest and on all other amounts charged to the Chargor hereunder at the Interest Rate. The Chargor,

- (a) if the Property is a freehold property, hereby charges the Property to the Bank; or
- (b) if the Property is a leasehold interest, hereby charges and subleases the Property to the Bank for and during the unexpired residue of the term of the lease, except the last day thereof, and all other estate, term, right of renewal and other interest of the Chargor in the lease;

to secure the repayment of the Indebtedness and the performance of all of the obligations of the Chargor contained herein. The Chargor hereby releases to the Bank all its claims upon the Property until the Chargor has repaid the Indebtedness and performed all of the obligations of the Chargor in the manner provided by this Charge.

3. Covenants of the Chargor

The Chargor hereby covenants with the Bank that:

- (a) The Chargor will ON DEMAND pay the Indebtedness and observe all provisos, conditions and agreements contained herein;
- (b) The Chargor has a good title in fee simple to the Property (unless the Chargor is a lessee of the Property), save and except prior registered encumbrances;
- (c) The Chargor has the right to charge the Property to the Bank;
- (d) On default, the Bank shall have quiet possession of the Property, free from all encumbrances, save as aforesaid;
- (e) Covenant 1.vii, deemed to be included in this Charge by subsection 7(1) of the Land Registration Reform Act, 1984 is hereby expressly varied by providing that the Chargor will, before or after default, execute such further assurances of the Property and do such other acts, at the Chargor's expense, as may be reasonably required;
- (f) The Chargor will insure the Property to an amount of not less than the Principal Amount PROVIDED that if and whenever such amount be greater than the insurable value of the buildings, Fixtures and improvements now or hereafter brought or erected upon the Property, such insurance shall not be required in any greater amount than such insurable value and if and whenever the same shall be less than the insurable value the Bank may require such insurance to the full replacement value. It is further agreed that the Bank may require any insurance hereunder to be cancelled and new insurance effected by an insurer to be approved by it and also may of its own accord effect or maintain any insurance herein provided for and any amount paid by the Bank therefor shall be payable forthwith to the Bank with interest at the Interest Rate by the Chargor and shall be a charge upon the Property;
- (g) The Chargor will in each year within ten (10) days after the Taxes become due and payable produce to and leave with the Bank the duly receipted tax bills for that year covering the Property;
- (h) This Charge shall be void UPON REPAYMENT of the Indebtedness upon demand; or without demand, UPON PERMANENT REPAYMENT of the Indebtedness, with written notice to such effect to the Bank. The Chargor releases to the Bank all the Chargor's claims upon the Property subject to this paragraph; and
- (i) The Chargor agrees to assign to the Bank forthwith upon the request of the Bank as additional security for payment of the Indebtedness and the performance of the covenants herein contained, any present or future lease which may be granted by the Chargor as to the whole or any portion of the Property and agrees to deliver to the Bank executed copies of all such leases at the written request of the Bank. The Chargor covenants to perform and comply with all lessor's covenants contained in any leases assigned by the Chargor to the Bank. Notwithstanding the assignment or assignments of any lease or leases by the Chargor to the Bank, it is nevertheless declared and agreed that none of the rights or remedies of the Bank under this Charge shall be delayed or in any way hindered or prejudiced by such assignment or assignments or by any act of the Bank pursuant thereto.

4. Additional Covenants if Property is a Leasehold Interest

The Chargor covenants with the Bank that:

- (a) The Chargor has a good leasehold title to the Property;
- (b) The Chargor has a right to charge and sublet the leasehold title to the Property to the Bank in the manner herein provided, and, if required, has obtained the lessor's consent to this Charge;
- (c) Neither the Chargor nor any other person has heretofore made, done, committed or suffered any act to encumber the lease or any part thereof;
- (d) The lease is a good, valid and subsisting lease and not surrendered, forfeited, amended or become void or voidable and the rents and covenants reserved have been duly paid and performed by the Chargor up to the Date of Signature of the Chargor;
- (e) During the continuance of this Charge, the Chargor will not amend, surrender or modify the lease without the written consent of the Bank and will pay the rent reserved by the lease and perform and observe the covenants, provisos and conditions contained in the lease and on the lessee's part to be performed and observed and hereby agrees to keep the Bank indemnified against all actions, claims and demands whatsoever in respect of the said rent and covenants or anything relating thereto; and
- (f) The Chargor will stand possessed of the Property for the last day of the term or any renewal term granted by the lease in trust for the Bank, and will assign and dispose thereof as the Bank may direct, but subject to the same right of redemption and other rights as are hereby given to the Chargor with respect to the derivative term hereby granted.

5. Repair and Maintenance of Property

The Chargor covenants with the Bank that the Chargor will keep the Property in good condition and repair. The Bank may, whenever it deems it necessary, by its agent enter upon and inspect the Property and the Chargor shall pay the Costs associated therewith. If the Chargor or anyone claiming under him neglects to keep the Property in good condition and repair or commits any act of waste on the Property or does anything by which the value of the Property shall be diminished, as to all of which the Bank shall be sole judge, or makes default as to any of the covenants or provisos herein contained, the Indebtedness shall, at the option of the Bank, forthwith become due and payable. In default of payment thereof the powers of entering upon and leasing or selling hereby given may be exercised forthwith, and the Bank may make such repairs as it deems necessary and the Costs thereof shall be paid by the Chargor.

6. Obligation to Build Diligently

The Chargor covenants with the Bank that if the Chargor fails at any time for a period of ten days to diligently carry on the work of construction of any building or buildings being or to be erected on the Property or, without the consent in writing of the Bank, departs in such construction from any plans and specifications thereof which must be approved by the Bank or from the generally accepted standards of construction in the locality of the Property, or permits any construction or other lien to be registered against the Property for any period exceeding thirty days, the Bank at its option at any time thereafter through its agents or contractors may enter the Property and have exclusive possession thereof and of all materials, plant, gear and equipment thereon free of interference from or by the Chargor and complete the construction of the building or buildings either according to the said plans and specifications or according to other plans, specifications or design as the Bank in its absolute discretion shall elect. All Costs in connection therewith shall be payable by the Chargor.

7. Remedies on Default of Chargor

It is hereby provided that:

(a) Power to Lease or Sell Property

The Bank on default of payment of the Indebtedness or any portion thereof for the minimum default period on giving the minimum notice, according to applicable law, may enter on, lease or sell the Property. Provided further that on default of payment for the minimum default period, according to applicable law, the foregoing power of entry, leasing and selling may be exercised by the Bank without any notice whatsoever.

(b) Rights of Bank in Sale of Property

- (i) The Bank in the event of default by the Chargor in payment of the Indebtedness or any portion thereof may sell the Property or any part thereof or, if the Property is a leasehold interest, sell the unexpired term of years demised by the lease or any part thereof by public auction or private sale for such price as can reasonably be obtained therefor and on such terms as to credit and otherwise and with such conditions of sale as it shall in its discretion deem proper, and in the event of any sale on credit or for cash or for part cash and part credit, the Bank shall not be accountable for or be charged with any monies until actually received by it. The Bank may rescind or vary any contract or sale and may buy in and re-sell the Property or any part thereof without being answerable for loss occasioned thereby; and no purchaser shall be bound to enquire into the legality, regularity or propriety of any sale or be affected by notice of any irregularity or impropriety; and no lack of default or want of notice or other requirement or any irregularity or impropriety of any kind shall invalidate any sale hereunder, but the Bank alone shall be responsible. The Bank may sell without entering into actual possession of the Property and while in possession shall be accountable only for monies which are actually received by it and sales may be made by it from time to time of parts of the Property to satisfy any portion of the Indebtedness, leaving the residue thereof secured hereunder on the remainder of the Property, or may take proceedings to sell and may sell the Property or any portion of the Property subject to the balance of the Indebtedness not yet due at the time of the said sale.

- (ii) Disposition of Leasehold Property - If the Property is a leasehold interest, the Chargor hereby irrevocably appoints the Bank as the Chargor's substitute to be the Chargor's attorney during the continuance of this security. In the event of default and on giving the notice contemplated herein to the Chargor for and on behalf of the Chargor, the Bank may assign the lease and convey the Property and the last day of the term granted by the lease as the Bank shall at any time direct, and in particular, upon any sale made by the Bank under the statutory power or power of sale herein contained, to assign the lease and convey the Property and the said reversion to the purchaser. It is hereby declared that the Bank or other person for the time being entitled to the Indebtedness may at any time, by deed, remove the Chargor or any other person from being a trustee of the lease under the declaration of trust hereinbefore declared and on the removal of the Chargor or any future trustee of the lease, appoint a new trustee or trustees in the Chargor's place.
- (iii) If the Property is a leasehold interest, the Chargor will, with respect to the lease, at the request of the Bank, but at the cost, charge and expense of the Chargor, grant and assign unto the Bank, or the person whom it may appoint, the last day of the said term hereinbefore excepted or any renewal or substituted term; and further, in the event of the Bank making any sale under the power of sale herein contained the Chargor shall stand seized and possessed of the Property for the last day of the said term hereinbefore excepted, and of any renewal or substituted term, and of all rights of renewal in trust for the purchaser or purchasers, his or their heirs, executors, administrators, successors and assigns.

(c) **Costs of Sale of Property**

The Costs of any sale proceedings hereunder, whether such sale proves abortive or not, incurred in taking, recovering or keeping possession of the Property or in enforcing the personal remedies under this Charge or by reason of non-payment or in procuring payment of the Indebtedness shall be payable by the Chargor whether any action or proceeding has commenced or not.

8. Appointment of Receiver

If the Chargor shall be in default in the observance or performance of any of the terms, conditions, covenants or payments described herein or in any additional or collateral security given by the Chargor to the Bank then the Bank may in writing, appoint any person, whether an officer or employee of the Bank or not, to be a receiver of the Property and the rents and profits derived therefrom, and may remove the receiver so appointed and appoint another in his stead. The term "receiver" as used in this Charge includes a receiver and manager. The following provisions shall apply to this paragraph:

- (a) The receiver so appointed is conclusively the agent of the Chargor and the Chargor shall be solely responsible for the acts or defaults and for the remuneration and expenses of the receiver. The Bank shall not be responsible in any way for any misconduct or negligence on the part of the receiver and may, from time to time, fix the remuneration of the receiver and be at liberty to direct the payment thereof from proceeds collected;
- (b) Nothing contained herein and nothing done by the Bank or by the receiver shall render the Bank a mortgagee in possession or responsible as such;
- (c) All monies received by the receiver, after providing for payment and charges ranking prior to this Charge and for all applicable Costs shall be applied in or towards satisfaction of the remaining Indebtedness;
- (d) The receiver so appointed shall have power to:
 - (i) take possession of the Property, collect rents and profits and realize upon additional or collateral security granted by the Chargor to the Bank and for that purpose may take any proceedings, be they legal or otherwise, in the name of the Chargor or otherwise;
 - (ii) carry on or concur in carrying on the business which the Chargor is conducting on and from the Property and for that purpose may borrow money on the security of the Property in priority to this Charge; and
 - (iii) lease all or any portion of the Property and for this purpose execute contracts in the name of the Chargor which said contracts shall be binding upon the Chargor;
- (e) The rights and powers conferred herein are supplemental to and not in substitution for any rights which the Bank may have from time to time.

9. Taking Possession of Personal Property

The Bank may distrain for arrears of any portion of the Indebtedness. The Chargor hereby waives the right to claim exemption and agrees that the Bank shall not be limited to the amount for which it may distrain.

10. Quiet Possession

Until default of payment the Chargor shall have quiet possession of the Property.

11. Release of Property by Bank

It is hereby agreed by the Chargor that the Bank may at its discretion at all times release any part or parts of the Property or any other security or any surety for the Indebtedness or any portion thereof either with or without any sufficient consideration therefor, without responsibility therefor and without thereby releasing any other part of the Property or any person from this Charge or from any of the covenants herein contained and without being accountable to the Chargor for the value thereof or for any money except that actually received by the Bank, it being expressly agreed that every part or lot into which the Property is or may hereafter be divided does and shall stand charged with the whole of the Indebtedness.

No extension of time given by the Bank to the Chargor, or any one claiming under the Chargor or any other dealing by the Bank with the owner or owners of the Property or of any part thereof shall in any way affect or prejudice the rights of the Bank against the Chargor or any other person liable for the payment of the Indebtedness or any portion thereof.

12. Payment of Other Charges and Performance of Other Obligations by Bank

The Chargor hereby agrees that:

- (a) The Bank may satisfy any charge now or hereafter existing or to arise or be claimed upon the Property and the amount so paid shall be added to the Indebtedness and bear interest at the Interest Rate and shall be payable forthwith by the Chargor to the Bank and in default of payment, the Indebtedness shall become payable and the powers of sale hereby given may be exercised forthwith without any notice. And in the event of the Bank satisfying any such charge or claim, it shall be entitled to all equities and securities of the person or persons so satisfied and it may retain any discharge or cessation of charge unregistered until paid; and
- (b) If the Property is a leasehold interest, and if the Chargor shall refuse or neglect to renew the lease or any renewals thereof granted hereafter, then, and as often as it shall happen, the Bank may, effect such renewals in its own name or otherwise, and every renewal of the lease and the Property thereby demised shall remain and be security to the Bank for the Indebtedness. All Costs in connection therewith shall be payable by the Chargor.

13. Sale or Transfer of Property by Chargor

The Chargor covenants and agrees with the Bank that:

- (a) The Chargor will not without the prior consent in writing of the Bank, sell, transfer or otherwise dispose of the Property or any portion thereof or any interest therein; and, in the event of such sale, transfer or other disposition, without the consent of the Bank, the Indebtedness hereby secured shall, at the option of the Bank, forthwith become due and payable; and
- (b) If the Property is a leasehold interest, no sale or other dealing by the Chargor with the lease or the Property or any part thereof or any other dealing by the Bank with the lease or the Property or any part thereof, shall in any way affect or prejudice the rights of the Bank against the Chargor or any other person liable to repay the Indebtedness hereby secured.

14. Charge Not a Substitute For Any Other Security

It is hereby expressly agreed by the Chargor that this Charge shall not create any merger, rebate or discharge of any debt owing to the Bank or of any lien, bond, promissory note, bill of exchange or other security held by or which may hereafter be held by the Bank, whether from the Chargor or any other party or parties whomsoever and this Charge shall not in any way affect any security held or which may hereafter be held by the Bank for the Indebtedness or any portion or portions thereof or the liability of any endorser or any other person or persons upon any such lien, bond, bill of exchange, promissory note or other security or contract or any renewal or renewals thereof held by the Bank for or on account of the Indebtedness or any portion or portions thereof nor shall the remedies of the Bank in respect thereof be affected in any manner whatsoever.

15. Judgments

The taking of a judgment or judgments against the Chargor on any of the covenants herein contained shall not operate as a merger of the said covenants or affect the Bank's rights to interest on the Indebtedness at the Interest Rate, and further that any such judgment may provide that interest thereon shall be computed at the Interest Rate until such judgment shall have been fully paid and satisfied.

16. Bank May appropriate Payments to Any Debt

It is hereby agreed that the Bank shall have the right at any time to appropriate any payment made as a temporary or permanent reduction of any portion of the Indebtedness whether the same be represented by open account, overdraft or by any bills, notes or other instruments and whether then due or to become due and may from time to time revoke or alter such appropriation and appropriate such payment as a temporary or permanent reduction of any other portion of the Indebtedness as in its sole and uncontrolled discretion it may see fit.

17. Charge Continuing Security

It is hereby agreed that this Charge may secure a current or running account and shall stand as a continuing security to the Bank for the payment of the Indebtedness and all interest, damages and Costs which may become due or payable to the Bank notwithstanding any fluctuation or change in the amount, nature or form of the Indebtedness or in the bills, notes or other obligations now or hereafter representing the same or any portion thereof or in the names of the parties to the said bills, notes or obligations or any of them.

18. Additional Covenants if Property is a Condominium Unit

The Chargor covenants with the Bank that:

- (a) The Chargor will promptly observe and perform all obligations imposed on the Chargor by the Condominium Act as enacted from time to time, and by the Declaration, the By-laws and the Rules, as amended from time to time, of the Condominium Corporation, by virtue of the Chargor's ownership of the Property. Any breach of the said duties and obligations shall constitute a breach of covenant under this Charge;
- (b) Without in any way limiting or restricting the generality of the foregoing:
 - (i) The Chargor will pay promptly when due any contributions to Common Expenses required of the Chargor as an owner of the Property;
 - (ii) The Chargor will transmit to the Bank forthwith upon the demand of the Bank satisfactory proof that all Common Expenses assessed against or in respect of the said Property have been paid as assessed;
 - (iii) The Bank may put out of and deduct from any advance of the Principal Amount secured hereunder all contributions to the Common Expenses assessed against or in respect of the said Property which have become due and payable and are unpaid at the date of such advance; and
 - (iv) Whenever and so long as the Bank so requires the Chargor shall on or before the date when any sum becomes payable by the Chargor in respect of Common Expenses pay such sum to the Bank. The Bank shall forthwith on receipt thereof remit all such sums to the Condominium Corporation on behalf of the Chargor or as the Condominium Corporation may from time to time direct;
- (c) The Bank by accepting delivery of and registering this Charge authorizes and empowers the Chargor to vote or consent or not to consent respecting all matters relating to the affairs of the relevant Condominium Corporation provided that:
 - (i) The Bank may at any time upon written notice to the Chargor and the Condominium Corporation revoke this authorization;
 - (ii) The Bank shall not be under any obligation to vote or consent or not to consent as aforesaid to protect the interest of the Chargor; and
 - (iii) The exercise by the Bank of its right to vote or consent or not to consent as aforesaid shall not constitute the Bank a mortgagee in possession.

19. Assignment of Rents

The Chargor hereby agrees with the Bank as follows:

- (a) The Chargor hereby assigns and sets over to the Bank all rents payable from time to time under all leases of the Property or any part thereof, whether presently existing or arising in the future, together with the benefit of all covenants, agreements and provisos contained in the said leases, in favour of the Bank;
- (b) Forthwith after making any lease of the Property or any part thereof the Chargor will execute and deliver to the Bank an assignment in registrable form in the Bank's usual form of all rents payable under such lease, the benefit of all covenants, agreements and provisos therein contained on the part of the tenant to be observed and performed and the reversion of such lease, and will also execute and deliver to the Bank all such notices and other documents as may be required in order to render such assignment effectual in law;
- (c) Nothing herein contained shall make the Bank responsible for the collection of rents payable under any lease of the Property or any part thereof or for the performance of any covenants, terms or conditions contained in any such lease;
- (d) The Bank shall not by virtue of these presents be deemed a mortgagee in possession of the Property;
- (e) The Bank shall be liable to account for only such rents as actually come into its hands less reasonable collection charges in respect thereof and may apply such rents to the repayment of the Indebtedness; and
- (f) Notwithstanding anything herein contained no lease of the Property or any part thereof made by the Chargor without the consent in writing of the Bank shall have priority over this Charge.

20. Interpretation and Headings

It is hereby agreed that wherever in this Charge the word "Chargor" is used the same shall extend to and include the heirs, executors, administrators, successors and assigns of the Chargor, and wherever in this Charge the word "Bank" is used the same shall extend to and include the successors and assigns of the Bank and wherever the singular or masculine is used the same shall be construed as meaning the plural or the feminine or the neuter where the context or the parties hereto so require. The headings do not form part of this document and have been inserted for convenience of reference only.

21. Condominium Act

If the Property is a condominium unit, this Charge is made pursuant to the Condominium Act.

Exhibit “H”

Enquiry Result

File Currency: 27MAY 2024

Show All Pages

All Pages

Note: All pages have been returned.

| | | | | | | | | | |
|---|--------------------------------|------------------|-------------|------------------------|-------------------------|----------------------------|---------------------|---------------------|------------------------|
| Type of Search | Business Debtor | | | | | | | | |
| Search Conducted On | MALAKAND PETROLEUM INC. | | | | | | | | |
| File Currency | 27MAY 2024 | | | | | | | | |
| | File Number | Family | of Families | Page | of Pages | Expiry Date | Status | | |
| | 784606428 | 1 | 2 | 1 | 2 | 05JUL 2027 | | | |
| FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN | | | | | | | | | |
| File Number | Caution Filing | Page of | Total Pages | Motor Vehicle Schedule | Registration Number | Registered Under | Registration Period | | |
| 784606428 | | 001 | 1 | | 20220705 1221 1590 0018 | P PPSA | 5 | | |
| Individual Debtor | Date of Birth | First Given Name | | | Initial | Surname | | | |
| Business Debtor | Business Debtor Name | | | | | Ontario Corporation Number | | | |
| | MALAKAND PETROLEUM INC. | | | | | | | | |
| | Address | | | City | Province | Postal Code | | | |
| | 1228 RASPBERRY TERR, | | | MILTON | ON | L9E 1N1 | | | |
| Individual Debtor | Date of Birth | First Given Name | | | Initial | Surname | | | |
| Business Debtor | Business Debtor Name | | | | | Ontario Corporation Number | | | |
| | MALAKAND PETROLEUM INC. | | | | | | | | |
| | Address | | | City | Province | Postal Code | | | |
| | 12 GUELPH STREET WEST | | | HALTON HILLS | ON | L7G 3Z2 | | | |
| Secured Party | Secured Party / Lien Claimant | | | | | | | | |
| | THE TORONTO-DOMINION BANK | | | | | | | | |
| | Address | | | City | Province | Postal Code | | | |
| | 20 MILVERTON DR | | | MISSISSAUGA | ON | L5R 3G2 | | | |
| Collateral Classification | Consumer Goods | Inventory | Equipment | Accounts | Other | Motor Vehicle Included | Amount | Date of Maturity or | No Fixed Maturity Date |
| | | X | X | X | X | X | | | |
| Motor Vehicle Description | Year | Make | | | Model | | V.I.N. | | |
| | | | | | | | | | |
| General Collateral Description | General Collateral Description | | | | | | | | |
| | | | | | | | | | |
| | | | | | | | | | |
| | 137 | | | | | | | | |

| Registering Agent | Registering Agent | | | |
|---------------------|---------------------|----------|-------------|--|
| | MACDONALD SAGER LLP | | | |
| Address | City | Province | Postal Code | |
| 800-150 YORK STREET | TORONTO | ON | M5H 3S5 | |

END OF FAMILY

| | | | | | | | | | |
|---|--|------------------|-------------|------------------------|-------------------------|----------------------------|---------------------|---------------------|------------------------|
| Type of Search | Business Debtor | | | | | | | | |
| Search Conducted On | MALAKAND PETROLEUM INC. | | | | | | | | |
| File Currency | 27MAY 2024 | | | | | | | | |
| | File Number | Family | of Families | Page | of Pages | Expiry Date | Status | | |
| | 784606464 | 2 | 2 | 2 | 2 | 05JUL 2027 | | | |
| FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN | | | | | | | | | |
| File Number | Caution Filing | Page of | Total Pages | Motor Vehicle Schedule | Registration Number | Registered Under | Registration Period | | |
| 784606464 | | 001 | 1 | | 20220705 1221 1590 0019 | P PPSA | 5 | | |
| Individual Debtor | Date of Birth | First Given Name | | | Initial | Surname | | | |
| Business Debtor | Business Debtor Name | | | | | Ontario Corporation Number | | | |
| | MALAKAND PETROLEUM INC. | | | | | | | | |
| | Address | | | | City | Province | Postal Code | | |
| | 1228 RASPBERRY TERR, | | | | MILTON | ON | L9E 1N1 | | |
| Individual Debtor | Date of Birth | First Given Name | | | Initial | Surname | | | |
| Business Debtor | Business Debtor Name | | | | | Ontario Corporation Number | | | |
| | MALAKAND PETROLEUM INC. | | | | | | | | |
| | Address | | | | City | Province | Postal Code | | |
| | 12 GUELPH STREET WEST | | | | HALTON HILLS | ON | L7G 3Z2 | | |
| Secured Party | Secured Party / Lien Claimant | | | | | | | | |
| | THE TORONTO-DOMINION BANK | | | | | | | | |
| | Address | | | | City | Province | Postal Code | | |
| | 20 MILVERTON DR | | | | MISSISSAUGA | ON | L5R 3G2 | | |
| Collateral Classification | Consumer Goods | Inventory | Equipment | Accounts | Other | Motor Vehicle Included | Amount | Date of Maturity or | No Fixed Maturity Date |
| | | | | X | X | | | | |
| Motor Vehicle Description | Year | Make | | | Model | V.I.N. | | | |
| | | | | | | | | | |
| General Collateral Description | General Collateral Description | | | | | | | | |
| | GENERAL ASSIGNMENT OF RENTS OVER THE REAL PROPERTY MUNICIPALLY KNOWN | | | | | | | | |
| | AS 12 GUELPH STREET WEST, HALTON HILLS, ONTARIO | | | | | | | | |
| Registering Agent | Registering Agent | | | | | | | | |
| | MACDONALD SAGER LLP | | | | | | | | |
| | Address | | | | City | Province | Postal Code | | |
| | 800-150 YORK STREET | | | | TORONTO | ON | M5H 3S5 | | |

LAST PAGE

Note: All pages have been returned.

[BACK TO TOP](#)



Show All Pages

This service is tested daily with McAfee SECURE™ to ensure the security of the transaction and information.

At ServiceOntario, we respect your right to privacy and value the trust you place in us. [Read more about ServiceOntario's Privacy Statement](#)

[Privacy](#)

[Accessibility](#)

[Contact us](#)

[FAQ](#)

[Terms of Use](#)

[© Queen's Printer for Ontario 2015](#)

Exhibit “I”



MISSISSAUGA COMMERCIAL BANKING
20 MILVERTON DRIVE
MISSISSAUGA, ON
L5R 3G2

Telephone No.: 905-890-4113
Fax No.: 905-890-4136

May 30, 2023

MALAKAND PETROLEUM INC.

12 GUELPH ST W
ACTON, ON
L7J 1S5

Attention: Mr. Fazle Majeed

Dear Mr. Majeed,

We refer to the Letter Agreement dated June 27, 2022, (the "Agreement") signed by you in relation to the credit facility (the "Facility") granted to you by the bank.

Obligations under the Agreement include, but are not limited to:

1. Provide annual notice to reader financial statements for Malakand Petroleum within 120 calendar days of fiscal year end.
2. Provide confirmation to the Bank on an annual basis that insurance policy are "inforce", and coverage deemed adequate by the Bank within 120 days of fiscal year end.
3. Provide confirmation of renewed Ontario Fuel Safety License provided by TSSA within 120 days of fiscal year end.
4. Provide confirmation to the Bank on an annual basis that taxes are current, such confirmation to be in a format accessible to the Bank.
5. No further encumbrances on the subject property without prior consent of the Bank.
6. Maintain a Debt Service Coverage ratio (DSC) of not less than 120%.

The DSC is calculated as follows:

$$\frac{\text{EBITDA} - \text{Unfinanced Capex} - \text{Distributions}}{\text{Principal} + \text{Interest}}$$

EBITDA is defined as earnings before interest, depreciation and amortization.

Unfinanced Capex is defined as total capital expenditures less proceeds on the disposal of capital assets and less new funded loans

Distributions is defined as dividends plus repayment of shareholder loans plus repayment of related party loans plus loans advanced plus share redemptions. Inflows may be netted against outflows or capital expenditures, but the net sum of distributions and capital expenditures may not exceed zero.

You were in default of these obligations as follows:

- 1 Finalized notice to reader financial statement for the year ended 31 August 2022 for Malakand Petroleum was received late on 20 March 2023 (79 days past due date).
- 2 Insurance policy was received late on 20 March 2023 (79 days past due date).
- 3 Renewed Ontario Fuel Safety License provided by TSSA was received late on 20 March 2023 (79 days past due date).
- 4 Relevant documentation confirming annual taxes are current was not provided.
- 5 Review of property sub-search report dd 11 May 2023 shows a new charge and rent assignment from TT3 Inc with registration HR1954372.
- 6 As of the year ended 31 August 2022, DSC test result of -2.88x (below 1.20x test threshold).

The Bank does not waive compliance with these obligations. Please be advised that the Bank preserves all rights and remedies under any and all agreements and security provided in connection with the Facility. If you fail to rectify the default to the complete satisfaction of the Bank, the Bank will exercise any or all rights and remedies under such agreements and security, and/or such rights and remedies as may otherwise be available to it at law.

Please direct any queries or comments to the attention of the writer.

Yours truly,

THE TORONTO-DOMINION BANK



ADITYA PRABHUNE
RELATIONSHIP MANAGER



ANDREW QUERCIA
MANAGER COMMERCIAL CREDIT

Exhibit “J”

Harrison Pensa

LAWYERS

Timothy C. Hogan

Direct Line: (519)-661-6743
thogan@harrisonpensa.com

Law Clerk: Isabelle Stacey
Direct Line: (519) 850-5573
istacey@harrisonpensa.com

December 4, 2023

Via Registered & Regular Mail & E-mail – fazlemajeed@gmail.com

Malakand Petroleum Inc.
1228 Raspberry Terrace
Milton, ON L9E 1N1

Dear Sir/Ma'am,

**Re: Indebtedness of Malakand Petroleum Inc. to The Toronto-Dominion Bank
(the "Bank")
Our File No. 199401**

We are the solicitors for the Bank with respect to loans provided to Malakand Petroleum Inc. (hereinafter the "**Debtor**").

According to the Bank's records, the Debtor is indebted to the Bank as at December 1, 2023, in the total sum of \$2,074,783.93, including all interest to December 1, 2023, plus all accruing interest, and plus the Bank's costs of enforcement on a solicitor and client basis (the "**Indebtedness**")¹.

The Indebtedness is comprised of the following:

| | |
|--|--|
| Mortgage Loan (ending in 01) | Principal: \$2,016,666.30 Interest: \$21,150.13 Total: \$2,037,816.43 (per diem \$480.68) |
| Overdraft (account ending in (996) (number subject to change) | \$36,967.50 |
| Visa (ending in 8153) (number subject to change) | \$0.00 |
| TOTAL | \$2,074,783.93 |

¹ Plus Discharge fee of \$1,000.00 due on payout.

Harrison Pensa LLP

130 Dufferin Avenue, Suite 1101, P.O. Box 3237, London, Ontario N6A 4K3 Phone: 519.679.9660 Fax: 519.667.3362
harrisonpensa.com

The Debtor is in default of certain agreements signed in favour of the Bank including, but not limited to, the following:

1. Letter of Agreement dated June 27, 2022, and signed by the Borrower on June 28, 2022;
2. General Security Agreement dated July 4, 2022;
3. Charge/Mortgage of Land in the principal sum of \$2,300,000.00 and receipted as instrument number HR1907865 on July 18, 2022, over the property, municipally known as 12 Guelph Street West, Halton Hills, ON legally described as:
 - a. LT 5, PL 438; PT LT 6, PL 438, AS IN 515429; ALSO SHOWN ON PL 1098; TOWN OF HALTON HILLS (PIN 24992-0323 LT) (the "**Property**"); and,
4. General Assignment of Rents with respect to the Property dated July 4, 2022, and registered on title to the Property as instrument HR1907866 on July 18, 2022.

On behalf of the Bank, we hereby demand payment of the Indebtedness owing by the Debtor together with interest thereon and all costs to the date of payment, ten (10) days from the date of payment.

Failing payment within ten (10) days will result in the Bank taking such steps as it considers necessary or appropriate to recover payment of the Debtor's Indebtedness and to protect its interest.


We advise that no intermediate acts, negotiations, indulgences, acceptance of payments or any continuing credit or provision of banking services shall act as a waiver to the Bank's rights, or demand for payment as set out herein, unless so expressly stated in writing.

The Bank expressly reserves its rights to take such further steps to protect its interest at any time, without further notice to the Debtor, if the Bank becomes aware of any matter which may impair its security. In addition, the Bank reserves the right to restrict or cancel all facilities at any time with no further notice and to place all bank accounts on deposit only.

Finally, also find attached to this letter our client's Notice of Intention to Enforce Security as well as the relevant consent to immediate enforcement of the Bank's security. By signing this consent, the Debtor waives the time period given by the Bank under this notice.

Yours truly,

HARRISON PENSA ^{LLP}

A handwritten signature in black ink, appearing to be 'TH' with a stylized flourish.

Timothy C. Hogan
TCH/ist
Enclosure

Cc: Fazle Majeed, as guarantor

**NOTICE OF INTENTION TO ENFORCE SECURITY
(Section 244(1) of the *Bankruptcy and Insolvency Act*)**

TO: Malakand Petroleum Inc., an insolvent person

TAKE NOTICE THAT:

1. The Toronto-Dominion Bank, a secured creditor, intends to enforce its security on the property of the insolvent person described as:

All collateral of the insolvent person as described in the following security and the proceeds from the sale of said collateral:

- a. General Security Agreement dated July 4, 2022;
- b. Charge/Mortgage of Land in the principal sum of \$2,300,000.00 and receipted as instrument number HR1907865 on July 18, 2022, over the property legally described as:
 - a. LT 5, PL 438; PT LT 6, PL 438, AS IN 515429; ALSO SHOWN ON PL 1098; TOWN OF HALTON HILLS (PIN 24992-0323 LT) (the "**Property**"); and,
- c. General Assignment of Rents with respect to the Property dated July 4, 2022, and registered on title and receipted as instrument number HR1907866 on July 18, 2022.

The property to which the security relates includes all real property, personal property and assets, including and not limited to, all book debts, inventory, and equipment wherever located, and all other collateral however described of the above-noted insolvent person, including but not limited to all assets leased to the above-noted insolvent person, and the proceeds thereof.

2. The security that is to be enforced is in the form of:
- a. General Security Agreement dated July 4, 2022;
 - b. Charge/Mortgage of Land in the principal sum of \$2,300,000.00 and receipted as instrument number HR1907865 on July 18, 2022, over the Property; and,
 - c. General Assignment of Rents with respect to the Property dated July 4, 2022, and registered on title and receipted as instrument number HR1907866 on July 18, 2022.
3. The total amount of indebtedness secured by the security is \$2,074,783.93 as at December 1, 2023 plus interest as set out in the agreements, plus all costs of enforcement on a solicitor and client basis.
4. The secured creditor will not have the right to enforce its security until after the expiry of the 10 day period following the sending of this notice, unless the insolvent person consents to an earlier enforcement.

DATED at London, Ontario this 4th day of December, 2023.

THE TORONTO-DOMINION BANK
by its solicitors, Harrison Pensa LLP



Per: _____
TIMOTHY C. HOGAN
Harrison Pensa LLP
130 Dufferin Avenue, Suite 1101
London, ON N6A 4K3
(519) 661-6743

Note: This Notice is given for precautionary purposes only and there is no acknowledgement that any person to whom this Notice is delivered is insolvent, or that the provisions of the *Bankruptcy and Insolvency Act* apply to the enforcement of this security.

CONSENT
(s.244(2) of the *Bankruptcy and Insolvency Act*)

THE UNDERSIGNED hereby acknowledges receipt of a copy of The Toronto-Dominion Bank's demand dated December 4, 2023 and the Notice of Intention to Enforce Security dated December 4, 2023 pursuant to s.244(1) of the *Bankruptcy and Insolvency Act* and hereby waives the 10 day period set out in the demand and notice and consents to the immediate enforcement The Toronto-Dominion Bank's security.

DATED at _____, Ontario this _____ day of December, 2023.

MALAKAND PETROLEUM INC.

Per: _____
I have authority to bind the corporation

Witness

Fazle Majeed

Harrison Pensa

LAWYERS

Timothy C. Hogan

Direct Line: (519)-661-6743
thogan@harrisonpensa.com

Law Clerk: Isabelle Stacey
Direct Line: (519) 850-5573
istacey@harrisonpensa.com

December 4, 2023

Via Registered & Regular Mail & E-mail – fazlemajeed@gmail.com

Fazle Majeed
1228 Raspberry Terrace
Milton, ON L9E 1N1

Dear Fazle Majeed,

**Re: Indebtedness of Malakand Petroleum Inc. to The Toronto-Dominion Bank
(the “Bank”)
Our File No. 199401**

We are the solicitors for the Bank with respect to the loans provided to Malakand Petroleum Inc. (hereinafter the “**Debtor**”).

According to the Bank’s records, the Debtor is indebted to the Bank in the amount of \$2,074,783.93 as of December 1, 2023, together with accruing interest thereon, and the Bank’s continuing costs of enforcement on a solicitor and client basis.

Pursuant to a guarantee executed by you on July 4, 2022, unlimited in sum, you are liable to pay the full amount of the guarantee being \$2,074,783.93, together with accruing interest thereon and the Bank’s continuing costs of enforcement (the “**Indebtedness**”).

On behalf of the Bank, we hereby demand payment of the Indebtedness together with interest thereon to the date of payment, within ten (10) days of the date of this letter.

Failing to make payment within ten (10) days will result in the Bank taking such steps as it considers necessary or appropriate to recover payment of the Indebtedness and to protect its interest.

We advise that no intermediate acts, negotiations or indulgences shall act as a waiver to the Bank’s rights, or demand for payment as set out herein, unless so expressly stated in writing.

Harrison Pensa LLP

Yours truly,

HARRISON PENSA ^{LLP}

A handwritten signature in black ink, appearing to be the initials 'TH' or 'TCH' with a stylized flourish.

Timothy C. Hogan
TCH/ist

Security of Registered Receipt (Bulk)

This receipt is necessary if enquiry is desired
Fragile and perishable articles are not indemnified against damage. Indemnity and fees information is available on request from your Postal Outlet.

Reçu (en nombre) Sécurité ou Recommandé

À produire en cas de réclamation.
Aucune indemnité ne sera versée pour l'avarie d'un objet fragile ou périssable. Vous pouvez obtenir des renseignements sur les indemnités et les droits à votre installation postale.

Sender Expéditeur

Harrison Pensa

130 Dufferin Avenue, Suite 1101
London, ON N6A 5R2

Sender Instructions

Note: Bulk Receipt is to be completed for 3 or more items. Present mailings at any Postal Outlet.

- A Complete and remove customer receipt.
- B Remove paper backing from receipt.
- C Affix receipt to this form.
- D Remove bottom bar code and affix to "Trace Mail Data Capture Document"
- E Remove paper backing from label
- F Apply label to envelope

Instructions pour l'expéditeur

Avis: Récépissé en nombre, pour 3 items et plus. Doit être complété avant de déposer à l'installation postale.

- A Remplissez et retirez le récépissé du client.
- B Retirez la pellicule protectrice du récépissé.
- C Collez le récépissé sur cette formule.
- D Retirez le code à barres du bas et l'apposez sur le "Document de saisie des données" pour le courrier repérable.
- E Retirez la pellicule de l'étiquette.
- F Collez l'étiquette sur l'enveloppe

Date: December 4, 2023

File: TD/Malakand Petroleum Inc. (199401/TCH)

| | | |
|--|--|-------------|
| <p>(1)</p> | | <p>(3)</p> |
| <p>(4)</p> <p>Declared Value / Valeur déclarée \$</p> <p>33-086-584 (17-12)</p> | <p>Tracking Number / Numéro de repérage de la SCP</p> <p>RN 742 288 318 CA</p> | <p>(6)</p> |
| <p>(7)</p> | | <p>(9)</p> |
| <p>(10)</p> | <p>(11)</p> | <p>(12)</p> |
| <p>(13)</p> <p>Declared Value / Valeur déclarée \$</p> <p>33-086-584 (17-12)</p> | <p>Tracking Number / Numéro de repérage de la SCP</p> <p>RN 742 288 295 CA</p> | <p>(15)</p> |

Exhibit “K”

From: Tim Hogan <thogan@harrisonpensa.com>
Sent: Wednesday, May 22, 2024 9:57 AM
To: Fazle Majeed
Cc: Thomas Masterson; Belliappa, Rukshana
Subject: FW: Indebtedness of Malakand Petroleum Inc. to The Toronto-Dominion Bank [IWOV-HPMain.FID730462]

Mr. Majeed

The Bank has been most reasonable in providing Malakand time to sell the gas station or obtain refinancing.

The Bank issued a default letter to Malakand on May 30th, 2023. In August 2023, you advised the Bank that the gas station was to be sold with the sale agreement expected by September 30th and a payout to the Bank by October 31st, 2023.

In the face of the continuing defaults and the failure of Malakand to complete a sale of the gas station and pay the indebtedness owing to the Bank, the Bank issued demands that expired mid-December 2023. The Bank has been in a position to enforce security since December 15, 2023, and has provided day-to-day forbearance to Malakand to allow the gas station to be marketed for sale or a refinancing pursued. Malakand has been unable to complete a sale of the gas station nor complete a refinancing.

Please be advised that the Bank will now be applying to the Court for an order appointing a Receiver over the property of Malakand.

Thank you

Tim Hogan* | [HARRISON Pensa LLP](https://www.harrisonpensa.com) | [130 Dufferin Avenue, Suite 1101, London, ON N6A 5R2](https://www.harrisonpensa.com) | *tel* 519-661-6743 | *fax* 519-667-3362 | thogan@harrisonpensa.com Assistant | Aimee Newman | *tel* 519-850-5568 | anewman@harrisonpensa.com *Services provided by *T. Hogan Professional Corporation* through Harrison Pensa LLP.

This e-mail may contain information that is privileged or confidential. If you are not the intended recipient, please delete the e-mail and any attachments and notify us immediately

From: Fazle Majeed <fazlemajeed@gmail.com>
Sent: Tuesday, May 21, 2024 5:56 PM
To: Tim Hogan <thogan@harrisonpensa.com>
Subject: Re: FW: Indebtedness of Malakand Petroleum Inc. to The Toronto-Dominion Bank [IWOV-HPMain.FID730462]

[EXTERNAL EMAIL]

Sale didn't go through even with just transfer of debts as we have 2nd mortgage. Refinance we can't as it's a special Loan

Regards

THE TORONTO-DOMINION BANK

v.

MALAKAND PETROLEUM INC.

Applicant

Respondent

Court File No. CV-24-00002452-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
MILTON, ONTARIO

AFFIDAVIT OF RUKSHANA BELLIAPPA

HARRISON PENZA LLP

Barristers & Solicitors
130 Dufferin Avenue, Suite 1101
London, Ontario N6A 5R2

Timothy C. Hogan (LSO #36553S)

Tel : (519) 679-9660
Fax: (519) 667-3362
Email: thogan@harrisonpensa.com

Lawyers for the Applicant,
The Toronto-Dominion Bank

THE TORONTO-DOMINION BANK

Applicant

-and-

MALAKAND PETROLEUM INC.

Respondent

Court File No. CV-24-00002452-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
MILTON, ONTARIO

APPLICATION RECORD

HARRISON PENZA^{LLP}

Barristers and Solicitors
130 Dufferin Avenue, Suite 1101
London, Ontario N6A 5R2

Timothy C. Hogan (LSO #36553S)

Tel: (519) 679-9660
Fax: (519) 667-3362
Email: thogan@harrisonpensa.com

Solicitors for the Applicant,
The Toronto-Dominion Bank