Court No. B-220208
Estate No. 11-254408
Bankruptcy Division 03
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE BANKRUPTCY OF
NICOLA VALLEY FUELCO INC.

**NOTICE OF HEARING**

May 27, 2022 **By Courier and Email**

**TO THE DEBTORS:** **Nicola Valley FuelCo Inc.**
2000, Etchemin Street
Lévis, Québec, Canada, G6W 7X6

Attention: Stephane Jouzier
stephane.jouzier@veolia.com

**AND TO:** **Deloitte Restructuring Inc.**
939 Granville Street
Vancouver, British Columbia, V6Z 1L3

**AND TO:** **Office of the Superintendent of Bankruptcy**
300 Georgia Street W, Suite 2000
Vancouver, British Columbia, V6B 6E1

**Re: Notice of the Time and Place of the Hearing of a Petition for Bankruptcy Order with respect to Nicola Valley FuelCo Inc.**

TAKE NOTICE that a petition for a bankruptcy order and a consolidation order to be made in respect of the property of Nicola Valley FuelCo Inc. will be heard before the judge in chambers at the courthouse at 800 Smithe Street, Vancouver, British Columbia by Microsoft Teams on June 7, 2022 at 9:45 am or so soon thereafter as the petition can be heard.

TAKE FURTHER NOTICE that if notice of cause against the petition is not filed in Court and a copy thereof served on the solicitor for the applicant creditor at least two days before the hearing and if Nicola Valley FuelCo Inc. does not appear at the hearing, the Court may make a bankruptcy order on such proof of the statements in the petition as the Court shall think sufficient.

**1. Date of hearing**

[ ] The parties have agreed as to the date of the hearing of the petition.

[ ] The parties have been unable to agree as to the date of the hearing but notice of the hearing will be given to the petition respondents in accordance with Rule 16-1(8)(b) of the Supreme Court Civil Rules.

[**X**] The petition is unopposed, by consent or without notice.

**2. Duration of hearing**

[ ] It has been agreed by the parties that the hearing will take

[**X**] The parties have been unable to agree as to how long the hearing will take and

(a) the time estimate of the petitioner(s) is 15 minutes, and

(b) **[X]** the petition respondents have not given a time estimate.

**3 Jurisdiction**

[ ] This matter is within the jurisdiction of a master.

**[X]** This matter is not within the jurisdiction of a master.

Date: 27/05/2022

Signature of lawyer for petitioner
Paige Marvel

Stikeman Elliott LLP
Barristers and Solicitors
1700 – 666 Burrard Street
Vancouver, BC V6C 2X8
Phone: 604-631-1300
Fax: 604-681-1825

B-220208
Court No.
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IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE BANKRUPTCY OF
NICOLA VALLEY FUELCO INC.

**PETITION FOR BANKRUPTCY ORDER**

THIS IS THE PETITION OF:

Veolia ES Canada Inc.
1705 – 3rd Avenue
Montreal, Quebec, Canada
H1B 5M9

ON NOTICE TO:

Merritt FuelCo Limited Partnership
2600-595 Burrard St, 3 Bentall Centre, PO Box 49314
Vancouver, British Columbia, Canada, V7X 1L3

Nicola Valley FuelCo Inc.
2000, Etchemin Street
Lévis, Québec, Canada, G6W 7X6

Deloitte Restructuring Inc.
939 Granville Street
Vancouver, British Columbia, V6Z 1L3

Office of the Superintendent of Bankruptcy
300 Georgia Street W, Suite 2000
Vancouver, British Columbia, V6B 6E1

**TAKE NOTICE** that Veolia ES Canada Inc. (the "**Petitioner**") will apply to this Court for the relief set out in this Petition.

The Petitioner hereby seeks the issuance of the orders respectively in the form of the draft orders attached hereto at **Schedule "A"** and **Schedule "B"**, to have Nicola Valley FuelCo Inc. (the "**GP**") adjudged bankrupt and to have the respective estates of the GP and Merritt Fuelco Limited Partnership (the "**LP**", and collectively with the GP, herein referred to as the "**Debtors**") administered procedurally and substantively on a consolidated basis by the Proposed Trustee (as defined below).

The Petitioner will rely on Rule 2-1(2)(b), 22-5(8) and 1-3(1) of the *Supreme Court Civil Rules* (the "**Rules of Court**") and Sections 42, 43 and 183 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "**BIA**") as well as Rule 3 of the *Bankruptcy and Insolvency General Rules*, C.R.C., c. 368, (the "**BIA Rules**").

At the hearing on this Petition will be read the Affidavit#1 of Brian J. Clarke which is served herewith.

The facts and the legal basis upon which this Petition is made are as follows:

**A. FACTS**

1. The Debtors, despite the GP having a registered head office in the Province of Quebec, have, and/or had, during the year immediately preceding the date of the initial bankruptcy event, their principal assets and business operations in the Province of British Columbia, within the jurisdiction of this Court.

2. The GP was incorporated and exclusively acted for the sole purpose of being the general partner of the LP in the context of the Project, and in such capacity, is liable for all of the debts of the LP, and both Debtors are insolvent as a result of the amounts they owe to the same creditors, and therefore should be administered on a procedurally and substantively consolidated basis.

3. The Debtors are indebted to the Petitioner in the sum of CAD$6,953,777.29, calculated as of April 30, 2022, plus interest thereafter and costs, the whole of which is unsecured. Therefore, the Petitioner holds an unsecured claim of greater than $1,000.

4. The Debtors have committed an act of bankruptcy within the six months preceding the filing of this Petition, as the Debtors have would down their operations and ceased to meet their liabilities as they become due, including the indebtedness owing to the Petitioner and the other creditors.

5. The Debtors are both insolvent and the Petitioner believes that it is advantageous to all stakeholders that the Debtors should be both be assigned into bankruptcy by the Petitioner so as to be administered on a procedurally and substantively consolidated basis.

6. The administration of both of the estates of the Debtors (i.e. the Property), on a procedurally and substantively consolidated basis is advantageous because:

   (a) it avoids the duplication in the administration of the estates and eliminates the need for Deloitte Restructuring Inc. ("**Deloitte**" or the "**Proposed Trustee**"), in its capacity as Proposed Trustee, to spend significant time and resources to determine claims for the different legal entities and the flow of funds between them;

   (b) it allows any legitimate claims against the assets of the Debtors to be dealt with equitably and efficiently considering that GP is liable for the entire indebtedness of LP;

   (c) it allows for a summary process to deal with any superfluous or otherwise meritless claims against the estate of the Debtors in the expeditious manner set out in the BIA, and ensures that such claims do not prejudice a timely recovery by the Debtors' creditors; and

   (d) it allows for an efficient and substantial analysis by the Proposed Trustee of any and all intercompany flows of funds.

7. The Petitioner is not aware of any party that would be materially prejudiced by the procedural and substantive consolidation of the estate of the Debtors.

8. Deloitte Restructuring Inc. is qualified to act as Trustee of the Property and has agreed to act as such and is acceptable to the Petitioner.

9. The Debtors do not oppose the relief sought herein.

**B. LEGAL BASIS**

**Assignment of the Debtors into Bankruptcy**

10. A debtor commits an act of bankruptcy, *inter alia*, in the event that it ceases to meet his liabilities generally as they become due:

> *42 (1) A debtor commits an act of bankruptcy in each of the following cases:*
> *[...]*

*(j) if he ceases to meet his liabilities generally as they become due.*

- BIA at s. 42(1)(j).

11. One or more creditors may file in court an application for a bankruptcy order against a debtor if it is alleged in the application that (a) the debt or debts owing to the Petitioner creditor or creditors amount to one thousand dollars; and (b) the debtor has committed an act of bankruptcy within the six months preceding the filing of the application.

*43. (1) Subject to this section, one or more creditors may file in court an application for a bankruptcy order against a debtor if it is alleged in the application that (a) the debt or debts owing to the Petitioner creditor or creditors amount to one thousand dollars; and (b) the debtor has committed an act of bankruptcy within the six months preceding the filing of the application.*

- BIA at s. 43(1).

- "Creditor" is defined by section 2 of the BIA as meaning a person having a claim, preferred, secured or unsecured, provable as a claim under the BIA. Sections 121-123 of the BIA define what constitute a provable claim.

**Procedural Consolidation**

12. This court has authority to procedurally consolidate multiple estates. The BIA and the BIA Rules provide that a court of bankruptcy retains its jurisdiction at law and in equity. Section 183 of the BIA provides:

*183. (1) The following courts are invested with such jurisdiction at law and in equity as will enable them to exercise original, auxiliary and ancillary jurisdiction in bankruptcy and in other proceedings authorized by this Act during their respective terms, as they are now, or may be hereafter, held, and in vacation and in chambers:*

*[...]*

*(c) in the Provinces of Nova Scotia and British Columbia, the Supreme Court;*

- BIA at s. 183.

13. Rule 3 of the BIA Rules provides:

> *In cases not provided for in the Act or these Rules, the courts shall apply, within their respective jurisdictions, their ordinary procedure to the extent that that procedure is not inconsistent with the Act or these Rules.*

- BIA Rules at Rule 3.

14. Rule 22-5(8) of the Rules of Court provides that:

> *Proceedings may be consolidated at any time by order of the court or may be ordered to be tried at the same time or on the same day.*

- Rules of Court at Rule 22-5(8).

15. The factors to be considered are: whether there is a common question of law or fact so that it is desirable to dispose of both at the same time; the avoidance of multiplicity of proceedings; savings of time and expense; inconvenience to parties; whether one action is at a more advanced stage; prejudice to the parties.

- *Shah* v. *Bakken* (1996), 20 B.C.L.R. (3d) 393.

16. The quick question to be asked is whether an order for actions to be tried together makes sense in the circumstances.

- *Sahal Estate* v. *Argitos*, 2010 BCSC 916.

17. The court ought to interpret the Rules of Court to secure the just, speedy and inexpensive determination of every proceeding on its merits.

- Rules of Court at Rule 1-3(1).

**Substantive Consolidation**

18. In determining the authority for substantive consolidation, the courts have held that there is no specific authority in the BIA to grant an order for substantive

consolidation. It is common ground, however, that the court has the authority to do so under its equitable jurisdiction under section 183 of the BIA.

- *Ashley Marlow Group Private Portfolio Management Inc.* (2006), 22 C.B.R. (5th) 126 (Ont. S.C.J.) at para. 71.

19. The factors to be considered by a court are:

(a) has there been substantial intermingling of property/activities without regard to the corporate identity?

(b) the extent to which substantive consolidation would promote expediency and cost efficiency; and

(c) the degree of material prejudice that would result from, and the parties affected by consolidation.

- *Associated Freezers of Canada Inc.* (1995), 36 C.B.R. (3d) 227 (Ont. Gen. Div.).
- *Ashley v. Marlow Group Private Property Portfolio Management Inc. (2006),* 22 C.B.R. (5th) 126 (Ont. S.C.J.).
- *ReJP Capital Corp.* (1995), 31 C.B.R. (3d) 101 (Ont. Gen. Div.).
- *Re Attractions Hippiques* (Montreal), s.e.c., 2009 QCCS 5494.

20. In this case, the estates to be substantively consolidated involve those of a limited partnership and its general partner. By law, in the event of insolvency of a limited partnership, the general partner is liable for the debts of the limited partnership.

- *The Partnership Act,* (Manitoba) C.C.S.M. c. P30.
- *Kucor Construction & Developments & Associates v. Canada Life Assurance Co. (1998),* 167 D.L.R. (4th) 272.

21. Courts have determined, in similar circumstances, that substantive consolidation between the estate of the limited partner and the general partner was warranted.

- *Ornge Global GP Inc. (Re),* 2013 ONSC 4518.

The Petitioner estimates that the hearing for this Petition should take 15 minutes.

Dated: May 24, 2022

Signature of Darlene Crimeni

| | |
|---|---|
| | Petitioner |
| X | Lawyer for Petitioner |

Darlene Crimeni
Stikeman Elliott LLP
Barristers and Solicitors
1700 – 666 Burrard Street
Vancouver, BC, V6C 2X8

Phone: 604-631-1300
Fax: 604-681-1825

Issued at the City of Vancouver, in the Province of British Columbia, this 25th day of May, 2022.

REGISTRAR IN BANKRUPTCY

Lawyer for Petitioner:

Darlene Crimeni
Stikeman Elliott LLP
Barristers and Solicitors
1700 – 666 Burrard Street
Vancouver, BC, V6C 2X8
Phone: 604-631-1300
Fax: 604-681-1825

## ENDORSEMENT ON ORIGINATING PLEADING OR PETITION FOR SERVICE OUTSIDE BRITISH COLUMBIA

The claiming party, Veolia ES Canada Inc., claims the right to serve this pleading on the Nicola Valley FuelCo Inc. outside British Columbia on the grounds that:

1. Pursuant to s.10(e) of the *Court Jurisdiction and Proceedings Transfer Act,* the proceedings is brought to enforce, assert, declare or determine proprietary or possessory rights or a security interest in property in British Columbia that is immovable or movable property;

2. pursuant to s.10(e) of the *Court Jurisdiction and Proceedings Transfer Act,* the proceeding concerns contractual obligations and the contractual obligations were to be performed in British Columbia; and

3. pursuant to s.10(h) of the *Court Jurisdiction and Proceedings Transfer Act*, the proceeding concerns a business carried on in British Columbia.

Schedule "A"

Court No.
Estate No.
Bankruptcy Division
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE BANKRUPTCY OF
NICOLA VALLEY FUELCO INC.

**BANKRUPTCY ORDER**

| | | | | |
|---|---|---|---|---|
| BEFORE | ) | THE HONOURABLE | ) | ●, THE ● |
| | ) | JUSTICE ● | ) | DAY OF JUNE, ● |
| | ) | | ) | |
| | ) | | ) | |

ON THE APPLICATION of Veolia ES Canada Inc. (the "**Applicant**"), a creditor of Nicola Valley FuelCo Inc. (the "**Debtor**") coming on for hearing by Teams at 800 Smithe Street, Vancouver, B.C. V6Z 2E1, on this day, and upon hearing Joseph Reynaud, counsel for the Applicant, and no one else appearing although duly served, and upon reading the materials filed;

AND it appearing to the Court that the following acts of bankruptcy have been committed: the Debtor has ceased to meet its liabilities generally as they become due including payment of the indebtedness owing to the Applicant, contrary to s. 42(1)(j) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended (the "**BIA**")

THE COURT ORDER THAT:

1. The Debtor be adjudged bankrupt by virtue of a bankruptcy order hereby made on this date.

2. Deloitte Restructuring Inc. be appointed as licensed insolvency trustee of the estate of the bankrupt (in such capacity, the "**Trustee**").

3. The Trustee give security in cash or by bond or suretyship without delay, in accordance with Subsection 16(1) of the BIA.

4. The Court further orders that the costs of the Applicant be paid out of the estate of the bankrupt on taxation of the estate.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT.

Signature of Lawyer for the Applicant,
Veolia ES Canada Inc.

Stikeman Elliott LLP (Darlene Crimeni)

By the Court:

Registrar

Schedule "B"

Court No.
Estate No.
Bankruptcy Division
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE BANKRUPTCY OF
NICOLA VALLEY FUELCO INC.

**ORDER MADE AFTER APPLICATION**

| | | |
|---|---|---|
| BEFORE | ) THE HONOURABLE<br>) JUSTICE ●<br>)<br>) | ) ●, THE ●<br>) DAY OF JUNE, ●<br>)<br>) |

ON THE APPLICATION of Veolia ES Canada Inc. (the "**Applicant**"), a creditor and related entity of Nicola Valley FuelCo Inc. (the "**GP**") and Merritt FuelCo Limited Partnership (the "**LP**", and collectively with the GP, herein referred to as the "**Debtors**") coming on for hearing by Teams at 800 Smithe Street, Vancouver, B.C. V6Z 2E1, on this day, and upon hearing Joseph Reynaud, counsel for the Applicant, and no one else appearing although duly served, and upon reading the materials filed;

THIS COURT ORDERS that:

1 The time for service of the Notice of Application and supporting materials is hereby abridged and the Notice of Application is properly returnable today and service thereof upon any person other than those listed thereon be and is hereby dispensed with.

2 Following the respective assignment into bankruptcy of the LP and the GP, the estate of the LP (the "**LP Estate**") and of the estate of the GP (the "**GP Estate**", and collectively with the LP Estate, the "**Estates**"), shall be procedurally and substantively consolidated and that Deloitte Restructuring Inc. (the "**Trustee**"), in its capacity as licensed insolvency trustee-in-bankruptcy of the LP Estate and the GP Estate, shall be authorized and directed to administer the Estates on a consolidated basis for all purposes in carrying out its administrative duties and other responsibilities as trustee under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, including, without limitation, as follows:

(a) calling and conducting any meeting of creditors or inspectors of the Estates pursuant to one combined advertisement of one meeting;

(b) issuing consolidated reports in respect to the Estates;

(c) preparing, filing, advertising and distributing any and all filings and/or notices relating to the administration of the Estates on a consolidated basis;

(d) establishing a single bank account for the Estates;

(e) establishing a single consolidated pool of assets containing all assets of the Estates; and

(f) administering all claims and making all distributions in respect of allowed claims from the consolidated pool.

3 Inspectors shall be appointed in relation to the consolidated Estates.

4 This action shall be assigned to be the proceedings of the bankrupt Estates.

5 The substantive consolidation of the Estates shall not:

(a) affect the separate legal status and corporate structures of the LP or the GP;

(b) cause the LP or the GP to be liable for any claim for which it otherwise is not liable by law; or

(c) affect the Trustee's right to seek to disallow any claim, including on the basis that such a claim is a duplicative claim.

6 A copy of this order shall be filed for each of the LP Estate and the GP Estate, but any other document required to be filed in this proceeding shall hereafter only be required to be filed in this action.

7 The approval of this Order, other than by counsel for the Applicant is hereby dispensed with.

THIS COURT REQUESTS the aid and recognition of other Canadian and foreign courts, tribunals, regulatory and administrative bodies to act in aid of and to be complimentary to this court in carrying out the terms of this claims process order where requested. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested:

(a) to make such orders and to provide such assistance to the Trustee as an officer of this court as may be necessary or desirable to give effect to this order; and

(b) to grant representative status to the Trustee if required in any foreign proceeding and to assist the Trustee and its respective agents in carrying out the terms of this order.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT.

Signature of Lawyer for the Applicant,
Veolia ES Canada Inc.

Stikeman Elliott LLP (Darlene Crimeni)

By the Court:

Registrar

Court File No.

**IN THE SUPREME COURT OF BRITISH COLUMBIA**
**IN BANKRUPTCY AND INSOLVENCY**

***IN THE MATTER OF THE BANKRUPTCY OF***
***NICOLA VALLEY FUELCO INC.***

# PETITION FOR BANKRUPTCY ORDER


**STIKEMAN ELLIOTT LLP**
Barristers & Solicitors
Suite 1700, 666 Burrard Street
Vancouver, British Columbia V6C 2X8, Canada

**Joseph Reynaud / William Rodier-Dumais / Darlene Crimeni**
Direct : +1 514 397 3019 / +1 514 397 3298 / +1 604 631 1429

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Lawyers for the Petitioner Veolia ES Canada Inc.

B-220208

No.
Estate No. 11-254408
Province of British Columbia
Bankruptcy Division 03-
Vancouver Registry


**IN THE SUPREME COURT OF BRITISH COLUMBIA**
**IN BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF THE BANKRUPTCY OF**
**MERRITT FUELCO LIMITED PARTNERSHIP & NICOLA VALLEY FUELCO INC.**

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## CERTIFICATE OF COMMISSIONER

I, Darlene Crimeni, Commissioner for taking Affidavits in and for British Columbia, am satisfied that swearing this statutory declaration using video technology was necessary because it was impossible or unsafe, for medical reasons, for the deponent and I to be physically present together with a commissioner of oaths.

I confirm that while connected via video technology, Brian J. Clarke showed me the front and back of his government-issued photo identity document and that I am reasonably satisfied it is the same person and the document is current and valid. I confirm that I have reviewed each page of this affidavit with Brian J. Clarke and verify that the pages are identical.

Dated: May 23, 2022

**Darlene Crimeni**

Darlene Crimeni
Barrister & Solicitor
1700-666 Burrard Street
Vancouver, BC V6C 2X8
604-631-1429

Affidavit #1 of
Brian J. Clarke in this case
affirmed May 23, 2022

No. B-220208
Estate No. 11-254408
Province of British Columbia
Bankruptcy Division 03-
Vancouver Registry

VANCOUVER REGISTRY MAY 25 2022

IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE BANKRUPTCY OF
MERRITT FUELCO LIMITED PARTNERSHIP & NICOLA VALLEY FUELCO INC.

**AFFIDAVIT**

I, Brian J. Clarke, businessperson, of 7907 N. Tripp, Skokie Illinois, 60076, United States of America, **AFFIRM THAT**:

1. I am a President and Chief Executive Officer of the Applicant, Veolia ES Canada Inc. ("**Veolia ES**" or the "**Applicant**"), a creditor and related entity of Merritt FuelCo Limited Partnership (the "**LP**"), and Nicola Valley FuelCo Inc. (the "**GP**" and collectively with the LP, herein referred to as the "**Debtors**") and as such, I have personal knowledge of the information deposed to in this affidavit, except where stated to be on information and belief, which information I believe to be true.

## A. The Parties and the Project

2. Veolia ES is a company incorporated under the *Canada Business Corporation Act* (R.S.C., 1985, c. C-44) (the "**CBCA**") having its principal place of business at 1705, 3rd Avenue, Montréal, Québec, Canada.

3. The GP is a corporation which was incorporated on January 21, 2014, under the CBCA with its registered office at 2000, Etchemin Street, Lévis, Québec, Canada, G6W 7X6. The GP was incorporated and exclusively acted for the sole purpose of being the general partner of the LP in the context of the Merritt Green Energy Project (the "**Project**"), and in such capacity, is liable for all of the debts of the LP.

4. The LP is a single purpose limited partnership that was formed between Nicola Valley Fuel HoldCo Limited Partnership and 8909580 Canada Ltd. as limited partners, and the GP, as general partner, pursuant to *The Partnership Act* (Manitoba) C.C.S.M. c. P30 and the *Merrit FuelCo Limited Partnership Agreement* dated July 7, 2014 (as amended from time to time, the "**LP Agreement**"), a copy of which is attached and marked hereto as **Exhibit "A"**. The LP's registered office is at 2600-595 Burrard St, 3 Bentall Centre, PO Box 49314, Vancouver British Columbia, Canada, V7X 1L3.

5. As further described below, the Debtors were respectively formed and incorporated for the specific purpose of entering into various agreements, acknowledgments and consents with third parties with a view to carry out the supply of fuel to the Project.

6. The Project is an electricity generation project located in Merritt, British-Columbia, that involves the burning of biomass. The central entity responsible for entering into different agreements to ensure the development of the Project is Merritt Green Energy Limited Partnership ("**ProjectCo**").

7. Veolia ES and the Debtors are part of a French multinational group of companies with activities in three main service and utility areas traditionally managed by public authorities: (i) water management, (ii) waste management and (iii) energy services.

8. The parent company of Veolia ES, Veolia Environnement S.A. (France), through its wholly owned indirect subsidiary, Veolia Energy Canada Inc. ("**Veolia Canada**"), formerly Dalkia Canada Inc. prior to January 7, 2016, holds controlling interests in the entities that provide services to the Project.

9. Attached hereto at **Exhibit "B",** is a simplified organizational chart showing the Applicant, the Debtors and the main entities to which they are related.

## B. Project Financing and Agreements

10. In November 2013, ProjectCo closed on its financing for the Project which was made up of (i) equity investments by Fengate Capital Management Ltd. ("**Fengate Capital**") and Veolia Canada, and (ii) debt financing from a syndicate of secured lenders (the "**Lenders**").

11. The plan for the Project was for it to consume approximately 200,000 metric tonnes (dry) of biomass fuel annually to generate more than 40MW of renewable electricity, enough to power more than 40,000 homes for a year.

12. ProjectCo entered into the following agreements in connection with the Project:

(a) an EPC Contract with Iberdrola Energy Project Canada Corporations for the construction of the power plant located in the District Municipality of Merritt, British Columbia (the "**Plant**");

(b) an *Operations & Maintenance Contract* with Merritt Operations Services Limited Partnership ("**OpCo LP**") dated July 7, 2014 (the "**O&M Contract**"), pursuant to which OpCo LP agreed to provide services in relation to the operation and maintenance of the Project, including the manpower required to run the Plant; and

(c) a *Fuel Supply Agreement* dated July 7, 2014 (the "**Fuel Agreement**") with the LP, pursuant to which the LP agreed to supply fuel in an uninterrupted manner to ProjectCo to be used as fuel for the Plant.

13. The revenue source of the Project was an *Electricity Purchase Agreement* dated December 1, 2011, between British Columbia Hydro and Power Authority and ProjectCo.

14. On March 27, 2018, the Applicant entered into a *Long-Term Loan Facility Agreement* (as may have been amended from time to time, the "**Agreement**") with the GP on behalf of the LP, a copy of which is attached and marked hereto as **Exhibit "C"**. Pursuant to the Agreement, the Applicant agreed, among other things, to make certain amounts available to the Debtors to ensure the development of the Project.

## C. Sale of the Project and Winding-up of the Debtors

15. In recent years, the Project ran into several significant issues, including the following:

(a) the Project faced important construction delays and defects, which resulted in higher and unplanned expenses;

(b) shortly after the Plant was constructed, British Columbia was affected by major forest fires, which disrupted the biomass fuel supply in the area and increased Canadian softwood lumber tariffs; and

(c) the closure of several sawmills in the vicinity of the Project site and the unavailability of fuel in the market (caused in part by the forest fires in British

Columbia and by the COVID-19 pandemic) made it challenging to deliver fuel that complied with the specifications and requirements of the various agreements with third parties.

16. As a result of the various issues affecting the Project which triggered defaults under each of the O&M Contract and the Fuel Agreement, the Lenders, ProjectCo, the LP, OpCo LP, Veolia Canada and Fengate Capital, ultimately entered into of a *Settlement and Release Agreement* dated as of May 21, 2021 (the "**Settlement Agreement**").

17. As part of the Settlement Agreement, the O&M Contract and the Fuel Agreement were terminated on a consensual basis and all amounts owing by ProjectCo thereunder were concurrently released and extinguished. Moreover, a sale process was undertaken for the Project which culminated in a successful sale of the Project.

18. As at the date hereof:

(a) the Debtors have effectively completely wound down their operations, including a successful transfer of their employees to other entities of the Veolia group;

(b) substantially all of the assets of the Debtors have been sold;

(c) the Debtors are unable to satisfy the amounts owing to the Applicant; and

(d) the Debtors are no longer able to meet their obligations as they become due and are insolvent.

19. In this context, the Debtors have not made payments to the Applicant pursuant to the Agreement despite the Applicant having lent them a substantial amount which remains unpaid to date.

20. On May 9, 2022, the Applicant sent a notice of default to the LP, copy of which is attached and marked hereto as **Exhibit "D"**, requesting payment of the total amount of indebtedness owing by the LP to the Applicant under the Agreement in capital, interest, costs and fees, which represented CAD$13,751,727.79 as of April 30, 2022, plus continuing interest (the "**Debt**"). Pursuant to the terms of the Agreement, the Debtors are, as of the date hereof, justly and truly indebted to the Applicant in the sum of the Debt, the whole amount of the Debt is unsecured.

21. Despite the GP having its registered head office in the Province of Quebec, the principal locus of its business operations, and the location of the Project, is in the Province of British Columbia:

(a) The LP's registered office is in Vancouver, British Columbia; and

(b) The power plant, where the operations of the Project are carried out, is located in Merritt, in British Columbia.

22. The Debtors, which are part of the same corporate group as the Applicant, do not oppose the Bankruptcy Order sought as the latter will allow for an orderly supervised liquidation and complete wind down of the Debtors on a consolidated basis.

23. I am swearing this affidavit via video conference and am not physically present before the commissioner hereof. In swearing this affidavit, I am advised by the commissioner and do verily believe, that we have followed the process described in the "*Notice to the Profession, the Public and the Media Re: Affidavits for use in Court Proceedings*", issued on March 27, 2020, by Chief Justice C.E. Hinkson of the Supreme Court of British Columbia.

*I, Darlene Crimeni, confirm that while connected via video technology, Brian J. Clarke showed me the front and back of his government-issued photo identity document and that I am reasonably satisfied it is the same person and the document is current and valid. I confirm that I have reviewed each page of this affidavit with Brian J. Clarke and verify that the pages are identical.*

SWORN BEFORE ME at the city of Vancouver in the Province of British Columbia on May 23, 2022

Commissioner for Taking Affidavits

Darlene Crimeni
Barrister & Solicitor
Stikeman Elliott LLP
1100-666 Burrard Street
Vancouver BC V6C2X8
604-631-1429

Brian J. Clarke, President and CEO
VEOLIA ES CANADA INC.

This is Exhibit "A" referred to in the Affidavit of Brian J. Clarke made before me this 23rd day of May 2022.

A Commissioner for Taking Affidavits in the Province of British Columbia

**Execution Version**

# MERRITT FUELCO LIMITED PARTNERSHIP

## LIMITED PARTNERSHIP AGREEMENT

**JULY 7, 2014**

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# LIMITED PARTNERSHIP AGREEMENT

This Limited Partnership Agreement dated July 7, 2014 is made

**AMONG:** **NICOLA VALLEY FUELCO INC.**, a corporation existing under the laws of Canada,

(the "**Initial General Partner**")

**AND:** **NICOLA VALLEY FUEL HOLDCO LIMITED PARTNERSHIP**, a limited partnership existing under the laws of the Province of Manitoba,

("**NV HoldCo LP**")

**AND:** **8909580 CANADA LTD.** a corporation existing under the laws of Canada.

("**Tolko LP**")

## PREAMBLE

**WHEREAS** the Initial General Partner and the Limited Partners desire to form a limited partnership pursuant to the provisions of the Act (hereinafter defined);

**WHEREAS** the Initial General Partner and the Limited Partners wish to enter into a limited partnership agreement for the purpose of governing the relationship between the Partners and the conduct, affairs and activities of the Partnership and wish to include provisions that the Partnership shall remain a Single Purpose Entity, the whole in connection with the long term supply of biomass to the Merritt Green Energy Project (the "**Project**");

**NOW THEREFORE**, the Parties agree as follows:

## Article 1
## INTERPRETATION

**1.1 Definitions.** In this Agreement, the following words and phrases have the following meanings, respectively, unless the context otherwise requires:

"**Acceptance**" has the meaning set forth in Section 11.9(2).

"**Acceptance Period**" has the meaning set forth in Section 11.9(2).

"**Act**" means *The Partnership Act* (Manitoba).

"**Adjusted for CPI Inflation**" means adjusted each year by the same annual percentage increase from the same time in the prior year in the CPI.

"**Affiliate**" of a Person means any Person that directly or indirectly Controls, is Controlled by, or is under common Control with, that Person.

"**Agreement**" means this limited partnership agreement, as it may be amended or supplemented from time to time.

"**Arm's Length**" has the meaning given to it in the Income Tax Act.

"**Blocked Distributions**" has the meaning ascribed thereto in Section 7.3

"**Business**" has the meaning ascribed thereto in Section 3.1.

"**Business Day**" means any day of the calendar year, other than a Saturday or Sunday or any day on which banks are generally not open for business in Toronto, Ontario or Vancouver, British Columbia.

"**Capital Account**" means, in relation to a Partner, an amount equal to such Partner's Capital Contribution after a deduction therefrom of any capital returned to such Partner and, where the context requires, means the individual account or accounts maintained by the General Partner in the books of the Partnership to which will be added the Partner's respective Capital Contribution.

"**Capital Contribution**" means, in relation to a Partner, the sum of money required to be paid to the Partnership by such Partner as a subscription price for Units subscribed for by such Partner, together with any additional amounts contributed or to be contributed by such Partner as capital in accordance with this Agreement.

"**Class A Partners**" has the meaning set forth in Section 11.1(2).

"**Class A Pro-Rata Portion**" has the meaning set forth in Section 11.1(2).

"**Class A Units**" means the Class A Units of the Partnership as provided in Article 5.

"**Class B Partner**" means a Limited Partner holding Class B Units.

"**Class B Pro-Rata Portion**" has the meaning set forth in Section 11.2(2).

"**Class B Units**" means the Class B Units of the Partnership as provided in Article 5.

"**Class C Net Capital**" in relation to a Class C Unit means:

(1) the Capital Contribution made in respect of the Class C Unit; minus

(2) distributions made pursuant to Article 7 in respect of the Class C Unit; plus

(3) Taxable Income allocated in respect of the Class C Unit; minus

(4) Taxable Losses allocated in respect of the Class C Unit;

"**Class C Partner**" means a Limited Partner holding Class C Units.

"**Class C Pro-Rata Portion**" means the proportion that the number of Class C Units owned by the Class C Partner is to the number of Class C Units owned by all of the Class C Partners.

"**Class C Units**" means the Class C Units of the Partnership as provided in Article 5.

"**Confidential Information**" means all information, documentation, knowledge, data or know-how owned, possessed or controlled by, or relating to, the Partnership or acquired or developed for its benefit, that the Partnership treats as confidential including, without limitation, trade secrets, proprietary, business and financial information, but excluding any information:

(1) that is or becomes part of the public domain by publication or otherwise without any breach of this Agreement;

(2) that is obtained on a non-confidential basis from another source acting in good faith without any breach of this Agreement; or

(3) that was not obtained from another source and that can be demonstrated by the recipient to have been known or independently developed by the recipient before disclosure to the recipient.

"**Control**" means the control exercised over a Person by the direct or indirect holding, as owner or other beneficiary, other than solely as the beneficiary of an unrealized security interest, of securities of such Person carrying more than 50% of the maximum possible number of votes that may be cast for the election or appointment of the directors of such Person and, in the case of a limited partnership, means the Control exercised over the general partner(s) thereof; and the terms "**Controlled**" and "**Controlling**" have the meanings correlative to the foregoing.

"**CPI**" means the Consumer Price Index for British Columbia, All Items (Not Seasonally Adjusted) as published by Statistics Canada, as adjusted or replaced from time to time.

"**Credit Agreement**" means the credit agreement dated as of the date hereof (as it may be amended, supplemented, restated or replaced from time to time) between, among others, Project Co, Union Bank S.A. as collateral agent, National Bank of Canada as the administrative agent and the persons who provided financing to Project Co for the Project named on the signature pages thereto (the "**Lenders**").

"**Creditor Partner**" has the meaning set forth in Section 7.5.

"**Current Account**" means the account established as set forth in Section 6.5.

"**Dalkia Fuel Supply Guarantee**" means the guarantee provided by Dalkia International S.A. and NV HoldCo LP to Project Co in connection with the FuelCo/Project Co Fuel Supply Agreement substantially in the form attached as Schedule C to this Agreement.

"**Date of Closing**" has the meaning set forth in Section 12.2.

"**Debt to Equity Ratio**" means:

(1) long term liabilities (excluding any current liabilities and excluding future income taxes),

divided by

(2) Net Assets.

"**Debtor Partner**" has the meaning set forth in Section 7.5.

"**Declaration**" means the declaration of limited partnership filed under the Act in respect of the Partnership and any amendments filed in respect thereto from time to time.

"**Default Class A and B Units**" has the meaning set forth in Section 11.8(1)(g).

"**Default Class C Units**" has the meaning set forth in Section 11.8(1)(h).

"**Default Period**" has the meaning set forth in Section 11.8(2).

"**Defaulting Partner**" has the meaning set forth in Section 11.8(1).

"**EPA**" means the electricity purchase agreement dated December 1, 2011 between Merritt Green Energy Limited Partnership and British Columbia Hydro and Power Authority (as amended).

"**Escrow Agent**" means one of Computershare Trust Company of Canada, CIBC Mellon Trust Company or TD Canada Trust Company as selected by Tolko LP prior to the Fuel Supply Commencement Date, or any other a Canadian trust company with an office in Vancouver, British Columbia selected by the Parties.

"**Escrow Agreement**" means an escrow agreement substantially in the form attached as Schedule B with such amendments acceptable to the parties to the escrow agreement, acting reasonably, as may be required by the Escrow Agent.

"**Escrowed Distributions**" means any distributions made pursuant to Section 7.1 on the Class B Units held by Tolko LP that are paid to and held by the Escrow Agent in escrow pursuant to the Escrow Agreement entered into pursuant to Section 7.7(2) and section 7.7(2) of the Tolko Fuel Supply Agreement and any interest earned on any such amounts while they are held by the Escrow Agent in escrow pursuant to the Escrow Agreement.

"**Escrowed Distributions Release Notice**" has the meaning given to that term in the Escrow Agreement.

"**Escrowed Fuel Price Payments**" means the amount of $2.48/ODT (in 2012 dollars as Adjusted for CPI Inflation each year after 2012) from payments for Residual Fibre and Shavings that have been delivered by Tolko to the Partnership pursuant to the Tolko Fuel Supply Agreement and are paid to and held by the Escrow Agent in escrow pursuant to the Escrow Agreement entered into pursuant to Section 7.7(2) and section 7.7(2) of the Tolko Fuel Supply Agreement and any interest earned on any such amounts while they are held by the Escrow Agent in escrow pursuant to the Escrow Agreement.

"**Event of Change**" has the meaning set forth in Section 11.8(1).

"**Fair Market Value**" means the price determined in an open and unrestricted market between informed prudent parties that are at Arm's Length and under no compulsion to act, expressed in terms of money or money's value.

"**Fiscal Year**" means the twelve (12) month period ending on the date provided in Section 10.1 in each calendar year.

"**Fuel Supplier Credit Risk**" has the meaning given to that term in the Tolko Fuel Supplier Liability Agreement.

"**Fuel Supplier Liability**" means any potential or outstanding obligation or liability of the Partnership pursuant to the FuelCo/Project Co Fuel Supply Agreement, the payment of which is guaranteed pursuant to the Dalkia Fuel Supply Guarantee, excluding:

(1) any obligation or liability of the Partnership payable solely as a result of an "O&M Default Termination" under section 17.1(1)(k) of the FuelCo/Project Co Fuel Supply Agreement (as the term "O&M Default Termination" is defined in the FuelCo/Project Co Fuel Supply Agreement); and

(2) if the Partnership re-sets to zero the liabilities of the Partnership in respect of damages or other amounts payable by the Partnership to Project Co pursuant to section 17.6(5) of the FuelCo/Project Co Fuel Supply Agreement without the prior written approval of Tolko LP (which consent may be given or withheld by Tolko LP in its sole discretion, with or without reason), any obligation or liability of the Partnership in excess of the "Supplier In-Contract Cap" as the "Supplier In-Contract Cap" existed prior to any such re-setting (as the term "Supplier In-Contract Cap" is defined in the FuelCo/Project Co Fuel Supply Agreement).

"**Fuel Supply Acknowledgement and Consent Agreement**" has the meaning given to that term in the Tolko Fuel Supply Agreement.

"**Fuel Supply Commencement Date**" has the meaning given to that term in the Tolko Fuel Supply Agreement.

"**FuelCo/Project Co Fuel Supply Agreement**" means the agreement to be entered into by the Partnership and Project Co for the supply of biomass in connection with the Project.

"**GAAP**" means generally accepted accounting principles in Canada for the Accounting Standards for Private Enterprises, applied consistently.

"**General Partner**" means the Initial General Partner, or any other Person admitted as a general partner of the Partnership and shown on the register maintained by the Partnership as a general partner of the Partnership.

"**Income Tax Act**" means the *Income Tax Act* (Canada) and the regulations thereunder applicable with respect thereto, as they may be amended from time to time.

"**Increase in Tolko's Actual Liability**" means, in the case of any Outstanding Potential Tolko Portion of a Fuel Supplier Liability, at any time and from time to time, any subsequent increase in the Maximum Actual Tolko Liability:

(1) as additional distributions are made on the Class B Units, or

(2) as additional payments are made for additional Residual Fibre and Shavings delivered to the Partnership pursuant to the Tolko Fuel Supply Agreement;

up to the amount of such Outstanding Potential Tolko Portion of a Fuel Supplier Liability.

"**Laws**" means all applicable statutes, codes, ordinances, decrees, rules, regulations, judicial or arbitral or administrative or ministerial or departmental or regulatory judgments, orders, decisions, rulings or awards, policies, decisions, public notices, directions, guidelines relating to the Partnership and/or its Business, or any provisions of such laws, including general principles of common and civil law and equity as may be in force from time to time; and "**Law**" means any one of the foregoing.

"**Lenders**" has the meaning given to that term in the definition of "Credit Agreement".

"**Limited Partners**" means, collectively, NV HoldCo LP, Tolko LP and any other Person who acquires Units as permitted by and in accordance with the provisions of this Agreement and is shown on the Register as a limited partner of the Partnership and "**Limited Partner**" means anyone of them.

"**Long Term Fuel Supply Subcontracts**" means a fuel supply subcontract, the terms of which and counterparty are acceptable to the Lenders, acting reasonably, with a rolling term of no less than five years (meaning the term of the subcontract will automatically renew at the end of each year of its term for another year on the same terms except at an agreed price which is subject to the following sentence). The maximum price under the subcontract during each contract year, including renewal years, shall not exceed the difference between: (i) the price at which Project Co is then obligated to purchase fuel from the Partnership under the FuelCo/Project Co Fuel Supply Agreement, minus (ii) $3.32 per ODT. For greater certainty, "Long Term Fuel Supply Subcontracts" does not include the Tolko Fuel Supply Agreement.

"**Losses**" means all losses, claims, demands, actions, damages, liabilities, obligations, costs and expenses, including fines, penalties, amounts paid in settlement of claims, and legal fees on a solicitor-client basis, including reasonable disbursements.

"**Maximum Aggregate Potential Tolko Liability**" means, on any specific date, the amount calculated using the following formulae, without deducting any of the Tolko Aggregate Paid Amounts:

Maximum Aggregate Potential Tolko Liability $_i$ = (25%) x (MAQ) x (2 years) x (Fuel Price $_i$) x ($CPI_i$ / $CPI_0$)

Where:

- Maximum Aggregate Potential Tolko Liability $_i$ is the Maximum Aggregate Potential Tolko Liability in year $_i$ (the year during which the calculation is made);
- MAQ is the lower of (i) 200,000 ODTs/year, or (ii) if the Maximum Annual Quantity under the FuelCo/Project Co Fuel Supply Agreement is reduced from its current quantity of 200,000 ODTs/year, 200,000 ODTs/year minus the amount of that reduction.
- $CPI_0$ is the CPI on January 1, 2012;
- $CPI_i$ is the CPI on January 1 of year $_i$ (the year during which the calculation is made);
- Fuel Price $_i$ is equal to:
    - $52 until the end of Contract Year 5;
    - $54 in Contract Years 6 to 10;
    - $56 in Contract Years 11 to 15;
    - $58 in Contract Years 16 to 20;
    - $60 in Contract Years 21 to 25;
    - $62 from and after Contract Year 26; and

- "Contract Year" has the meaning given to that term in the FuelCo/Project Co Fuel Supply Agreement.

- "Maximum Annual Quantity" has the meaning given to that term in the FuelCo/Project Co Fuel Supply Agreement

"**Maximum Actual Tolko Liability**" means, on any specific date, the amount equal to:

(1) the aggregate amount of all distributions on the Class B Units from the date of the Agreement until that specific date pursuant to the Agreement, including the Blocked Distributions and the Escrowed Distributions, plus

(2) an amount equal to $2.48/ODT (in 2012 dollars as Adjusted for CPI Inflation each year after 2012) times the aggregate number of ODTs of Residual Fibre and Shavings that have been delivered to the Partnership pursuant to the Tolko Fuel Supply Agreement from the date of the Tolko Fuel Supply Agreement until that specific date,

up to but not exceeding the then Maximum Aggregate Potential Tolko Liability, minus the then Tolko Aggregate Paid Amounts, an illustration of which is set forth in Schedule A to this Agreement.

"**Net Assets**" means the sum of capital stock and retained earnings.

"**Non-Defaulting Partner(s)**" has the meaning set forth in Section 11.8(1)(g).

"**Notice of Sale**" has the meaning set forth in Section 11.9(1).

"**NV Holdco LP**" has the meaning given to that term on page one of this Agreement, and includes its permitted assigns and its successors, by amalgamation or otherwise.

"**ODT**" means 1,000 kilograms at 0% moisture content.

"**Offered Units**" has the meaning set forth in Section 11.9(1).

"**Offeree(s)**" has the meaning set forth in Section 11.9(1).

"**Offeror**" has the meaning set forth in Section 11.9(1).

"**O&M Contractor**" means Merritt Operations Services Limited Partnership.

"**Other Fuel Supplier Subcontractor**" means any Person having executed a contract with the Partnership for the supply of biomass to the Project for a term equal to or longer than the then remaining term of the FuelCo/Project Co Fuel Supply Agreement, excluding Tolko and its Affiliates.

"**Outstanding Liabilities**" has the meaning set forth in Section 7.7(3)(f)(i).

"**Outstanding Potential Tolko Portion of a Fuel Supplier Liability**" means, in the case of any Fuel Supplier Liability that the Partnership was not able to fund entirely from cash flow generated by its operations all or any portion of which was funded by any one or more of (i) the issuance of Units pursuant to Section 11.3, (ii) pursuant to the Dalkia Fuel Supply Guarantee and (iii) pursuant to any Tolko Fuel Supplier Liability Agreements, the difference between:

(1) twenty-five percent (25%) of the amount of the Fuel Supplier Liability funded by any one or more of the issuance of Units pursuant to Section 11.3, pursuant to the Dalkia Fuel Supply Guarantee and pursuant to any Tolko Fuel Supplier Liability Agreements, and

(2) the amount funded by any one or more of the issuance of Units to Tolko LP pursuant to Section 11.3 and pursuant to any Tolko Fuel Supplier Liability Agreements;

up to the Maximum Actual Tolko Liability.

"**Parties**" means the parties to this Agreement; and "**Party**" means any one of them.

"**Partners**" means collectively, the Limited Partners and the General Partner, and subject to the terms and conditions hereof, their respective successors and assigns, and "**Partner**" means any one of them.

"**Partnership**" means Merritt FuelCo Limited Partnership formed under the Declaration and this Agreement.

"**Partnership Interest**" means all right, title and interest in the Partnership of a Partner, including, without limitation, a Partner's Units and a Partner's rights under this Agreement.

"**Permitted Transferee**" means a wholly-owned Affiliate of the Limited Partner transferring its Units.

"**Person**" means an individual, corporation, body corporate, partnership, trust, unincorporated organization, governmental body or any trustee, executor, administrator, other legal representative or other form of entity or organization or other person of any nature whatsoever, whether now or hereafter in existence.

"**Prime Rate**" means, for any day, a rate per annum equal to the annual rate of interest established by National Bank of Canada as being its reference rate then in effect for determining interest rates for commercial loans denominated in Canadian Dollars made in Canada.

"**Project**" has the meaning set forth in the preamble.

"**Project Co**" means Merritt Green Energy Limited Partnership, its successors and permitted assigns.

"**Proportionate Share**" has the meaning set forth in Section 11.8(1)(g).

"**Remaining Potential Tolko Liability**" means the difference between the Maximum Aggregate Potential Tolko Liability minus the Tolko Aggregate Paid Amounts.

"**Required Escrow**" means Tolko LP has not delivered to the Chief Financial Officer or Treasurer of Dalkia Canada Inc., as the case may be, the certificate required under Section 7.8(1) within the time required under Section 7.8(1) confirming that Tolko's Debt to Equity Ratio was lower than 1 and that Tolko's Net Assets were greater than $400,000,000.

"**Residual Fibre**" means sawdust and hog fuel generated by the operations at the Sawmill.

"**Sawmill**" means the Nicola Valley sawmill located in Merritt, British Columbia, currently owned and operated by Tolko.

"**Securities**" means Class A Units and any rights, warrants, options and other instruments entitling the holder, whether or not on a contingency, to acquire Class A Units of the Partnership from treasury, and any instruments convertible, whether or not on a contingency, into any of the foregoing.

"**Shavings**" means wood shavings generated by the operations at the Sawmill.

"**Single Purpose Entity**" means a Person, which:

(1) is formed or organized solely for the purpose of the business of the Partnership as described in Section 3.1;

(2) does not engage, directly or indirectly, in any business other than the business of the Partnership as described in Section 3.1;

(3) holds itself out as being a Person, separate and apart from any other Person;

(4) does not commingle its assets with those of any other Person;

(5) conducts its own business in its own name or, where not so permitted by law, in the name of the General Partner and provided its own business is restricted to the business of the Partnership as described in Section 3.1;

(6) does not acquire obligations or securities of its Partners or any Affiliate thereof other than as permitted by this definition of Single Purpose Entity;

(7) does and will correct any known misunderstanding regarding its separate identity; and

(8) shall at all times be authorized to carry on business in the Province of British Columbia.

"**Special Resolution**" means (a) any resolution passed by the affirmative vote of Limited Partners who collectively hold more than 50% of the total number of issued and outstanding Class A Units and Limited Partners who collectively hold more than 50% of the total number of issued and outstanding Class B Units at a meeting of the Partnership duly called and at which a quorum is present, or (b) any written resolution signed in one or more counterparts by Limited Partners who collectively hold more than 50% of the total number of issued and outstanding Class A Units and Limited Partners who collectively hold more than 50% of the total number of issued and outstanding Class B Units.

"**Suspension Period**" has the meaning set forth in Section 7.6.

"**Taxable Income**" or "**Tax Loss**", in respect of any Fiscal Year means, respectively, the amount of income or loss for tax purposes of the Partnership for such period as determined in accordance with this Agreement and the provisions of the Income Tax Act (including the amount of the taxable capital gain or allowable capital loss from the disposition of each capital property of the Partnership).

"**Time of Closing**" has the meaning set forth in Section 12.2.

"**Tolko**" means Tolko Industries Ltd. and its successors, by amalgamation and otherwise.

"**Tolko Aggregate Paid Amounts**" means, on any specific date, the aggregate of, without duplication:

(1) all amounts actually paid by Tolko or Tolko LP to the Partnership, Dalkia International S.A or NV HoldCo LP pursuant to any Tolko Fuel Supplier Agreements;

(2) all amounts paid by Tolko LP for the issuance of additional Units in the Partnership pursuant to Section 11.2, Section 11.3 or Section 11.4 of this Agreement (including the amount of any Blocked Distributions actually disbursed pursuant to Section 7.3(a) of this Agreement as payment by Tolko LP for the issuance of Units in the Partnership to Tolko LP) to raise funds for the Partnership to pay a Fuel Supplier Liability or for any Outstanding Potential Tolko Portion of a Fuel Supplier Liability, but excluding any portion of such amounts paid by Tolko LP for the issuance of additional Units in the Partnership that is returned pursuant to Section 11.3(5);

(3) with respect to any Escrowed Distributions:

(a) in the case of any Escrowed Distributions which are the property of Tolko LP pursuant to Section 7.7(2)(a), the amount of such Escrowed Distributions actually paid to the Partnership or to either one or both of Dalkia International S.A or NV HoldCo LP as contemplated in Section 7.7(3) of this Agreement, but excluding any portion of such Escrowed Distributions actually paid to the Partnership that is returned pursuant to Section 11.3(5); and

(b) in the case of any Escrowed Distributions which become the property of the Partnership pursuant to Section 7.7(2)(b), the amount of such Escrowed Distributions that should have been paid to the Partnership or to either one or both of Dalkia International S.A or NV HoldCo LP in accordance with the Escrow Agreement as and when contemplated in Section 7.7(3) of this Agreement, regardless of whether or to whom those Escrowed Distributions are actually disbursed (including, for example, if those Escrowed Distributions are seized by a creditor of the Partnership instead of being paid to the Partnership or to either one or both of Dalkia International S.A or NV HoldCo LP as and when contemplated in Section 7.7(3) of this Agreement), excluding (i) any portion of such Escrowed Distributions that are actually disbursed to Tolko LP as contemplated in Section 7.7(3) of this Agreement and (ii) any portion of such Escrowed Distributions that are not paid to the Partnership or to either one or both of Dalkia International S.A or NV HoldCo LP as a result of any act or omission of Tolko or Tolko LP; and

(4) with respect to any Escrowed Fuel Price Payments:

(a) in the case of any Escrowed Fuel Price Payments which are the property of Tolko pursuant to section 7.7(2)(a) of the Tolko Fuel Supply Agreement, the amount of such Escrowed Fuel Price Payments actually paid to the Partnership or to either one or both of Dalkia International S.A or NV HoldCo LP as contemplated in section 7.7(3) of the Tolko Fuel Supply Agreement; and

(b) in the case of any Escrowed Fuel Price Payments which become the property of the Partnership pursuant to section 7.7(2)(b) of the Tolko Fuel Supply Agreement, the amount of such Escrowed Fuel Price Payments that should have been paid to the Partnership or to either one or both of Dalkia International S.A or NV HoldCo LP in accordance with the Escrow Agreement as and when contemplated in section 7.7(3) of the Tolko Fuel Supply Agreement, regardless of whether or to whom those Escrowed Fuel Price Payments are actually disbursed (including, for

example, if those Escrowed Fuel Price Payments are seized by a creditor of the Partnership instead of being paid to the Partnership or to either one or both of Dalkia International S.A or NV HoldCo LP as and when contemplated in section 7.7(3) of the Tolko Fuel Supply Agreement), excluding (i) any portion of such Escrowed Fuel Price Payments that are actually disbursed to Tolko as contemplated in section 7.7(3) of the Tolko Fuel Supply Agreement and (ii) any portion of such Escrowed Fuel Price Payments that are not paid to the Partnership or to either one or both of Dalkia International S.A or NV HoldCo LP as a result of any act or omission of Tolko or Tolko LP; and

(5) all amounts paid by Tolko pursuant to section 17.2 of the Tolko Fuel Supply Agreement, excluding any amounts paid by Tolko pursuant to section 17.2 of the Tolko Fuel Supply Agreement that under section 18.3(1) of the Tolko Fuel Supply Agreement are excluded from the limitations on Tolko's liability set out in section 18.2(1) of the Tolko Fuel Supply Agreement.

"**Tolko Fuel Supplier Liability Agreement**" means a fuel supplier liability agreement entered into by Tolko, Tolko LP, FuelCo, Dalkia International S.A. and NV HoldCo LP in connection with any Fuel Supplier Liability substantially in a form attached as Schedule F to the Tolko Fuel Supply Agreement for all or any portion of the Maximum Actual Tolko Liability.

"**Tolko Fuel Supply Agreement**" means the agreement to be entered into by the Partnership and Tolko for the supply of biomass to the Partnership in connection with the Project.

"**Tolko LP**" has the meaning given to that term on page one of this Agreement, and includes its permitted assigns and its successors, by amalgamation or otherwise.

"**Transfer**" includes any sale, exchange, assignment, gift, bequest, disposition, mortgage, hypothecation, charge, pledge, encumbrance, grant of security interest or other arrangement by which possession, legal title or beneficial ownership passes, directly or indirectly, from one Person to another, whether or not voluntary and whether or not for value, and any agreement to effect any of the foregoing.

"**Transferor**" has the meaning set forth in Section 11.7.

"**Trigger Event**" has the meaning ascribed thereto in Section 7.3.

"**Undistributed Amounts**" means, in the case of any Units being redeemed pursuant to Section 11.2(6):

(1) in the case of any Class A Units and any Class B Units, the total aggregate amount of net Taxable Income of the Partnership allocated to those Units during the time that those Units have been issued and outstanding, minus the aggregate amount of all distributions (including all Blocked Distributions and Escrowed Distributions) that have been made on those Units; and

(2) in the case of any Class C Units, the amount of $1.00 per Unit.

"**Units**" means the Class A Units, Class B Units and the Class C Units of the Partnership as provided for in Article 5.

**1.2 Additional Rules of Interpretation.**

(1) *Headings and Table of Contents.* The inclusion in this Agreement of headings of Articles and Sections and the provision of a table of contents are for convenience of reference only and are not intended to be full or precise descriptions of the text to which they refer.

(2) *Section References.* Unless the context requires otherwise, references in this Agreement to Articles, Sections and Subsections are to Articles, Sections and Subsections of this Agreement.

(3) *Statute References.* Unless otherwise indicated, all references in this Agreement to any statute include the regulations thereunder, in each case as amended, re-enacted, consolidated, supplemented or replaced from time to time and in the case of any such amendment, re-enactment, consolidation, supplement or replacement, reference herein to a particular provision shall be read as referring to such amended, re-enacted, consolidated or replaced provision.

(4) *Document References.* All references herein to any agreement (including this Agreement) or document mean such agreement or document as amended, restated, supplemented or replaced from time to time in accordance with the terms thereof and, unless otherwise specified therein, includes all schedules and exhibits attached thereto.

(5) *Currency.* Except as otherwise expressly provided in this Agreement all dollar amounts referred to in this Agreement are stated in Canadian dollars.

(6) *Reference to Acts Performed by the Partnership or Rights of the Partnership.* For greater certainty, where any reference is made in this Agreement to an act to be performed by the Partnership or to rights of the Partnership, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by the General Partner on behalf of the Partnership or some other Person duly authorized to do so by the General Partner or pursuant to the provisions hereof, or to rights of the General Partner, in its capacity as General Partner of the Partnership, as the case may be.

(7) *Preamble.* The preamble hereto shall form an integral part of this Agreement.

## Article 2
## FORMATION OF PARTNERSHIP AND RELATIONSHIP BETWEEN THE PARTIES

**2.1 Formation of Partnership.** The Parties agree to and hereby form a limited partnership in accordance with the Laws of the Province of Manitoba and the provisions of this Agreement with the Parties being, as of the date hereof, the only Partners in the Partnership. The Partners shall from time to time execute such certificates, statements or other documents, and do such filings and recordings and perform such other acts, as shall be required in order to comply with the requirements of the Laws of the Province of Manitoba for the formation of a limited partnership.

**2.2 Name.** The name of the Partnership shall be **MERRITT FUELCO LIMITED PARTNERSHIP**. The General Partner shall have the right to change the name of the Partnership as it deems appropriate, from time to time, including in order to comply with the Laws of the jurisdiction in which the Partnership may carry on its activities. If the General Partner changes the name of the Partnership, the General Partner shall file or cause to be filed a change in a limited partnership form or other prescribed form in compliance with the Act and *The Business Names Registration Act* (Manitoba) amending the Declaration by changing the name of the Partnership and the General Partner shall provide notice of the new name to the Partners within twenty (20) days of such change.

**2.3 Principal Office.** The principal office of the Partnership shall at all times be located at the principal business office of the General Partner located in Canada and may be changed from time to time by the General Partner giving notice of such change to the Partners within twenty (20) days of such change. The Business shall be conducted at such place or places as may from time to time be selected or approved by the General Partner.

**2.4 Commencement and Term of Partnership.** The Partnership shall commence as of the date of the registration of the Declaration in accordance with the Act and will continue until dissolution and termination pursuant to the terms hereof. The Partnership will not dissolve or terminate solely by virtue of the admission or resignation of a Partner or the repurchase of a Partner's Units or solely by virtue of any amendment to the terms of this Agreement. The General Partner shall renew the registration of the Partnership every three (3) years, as prescribed under *The Business Names Registration Act* (Manitoba).

## Article 3
## PURPOSE OF THE PARTNERSHIP AND RESTRICTIONS ON THE BUSINESS OF THE PARTNERSHIP

**3.1 Purpose and Business.** The Partnership is a Single Purpose Entity and shall not at any time cease to be a Single Purpose Entity. The Partnership's purpose and business activities (the "**Business**") are limited to the following:

(1) the supply of biomass for the Project or to any other Person;

(2) the entering into of the FuelCo/Project Co Fuel Supply Agreement and the performance of its obligations thereunder;

(3) the entering into of the Tolko Fuel Supply Agreement and the performance of its obligations thereunder;

(4) the entering into of the operations interface agreement dated as at the date hereof among Project Co, the O&M Contractor and the Partnership and the performance of its obligations thereunder;

(5) the acknowledgement and consent by the Partnership in favour of Union Bank, N.A.;

(6) the acknowledgement and consent agreement, in respect of the operations interface agreement referred to under Section 3.1(4), among Union Bank, N.A., Project Co, the O&M Contractor and the Partnership; and

(7) undertaking such other activities as are necessary, desirable or appropriate to carry out the foregoing permitted activities of the Partnership, or ancillary or incidental in connection with such activities, including (i) subject to Section 3.3, the entering into of a management services agreement with Dalkia Canada Inc. or one of its Affiliates and the performance of its obligations thereunder and (ii) the performance and maintenance of works relating to such activities, it being understood that the Partnership shall not engage directly or indirectly in any activity other than activities necessary, desirable or appropriate to carry out the foregoing permitted activities.

**3.2 Amendments to the FuelCo/Project Co Fuel Supply Agreement, EPA or Operations Interface Agreement.** As long as Tolko LP is a limited partner in the Partnership, the Partnership will not agree to any:

(1) amendments to the FuelCo/Project Co Fuel Supply Agreement;

(2) settlements of any disputes under the FuelCo/Project Co Fuel Supply Agreement that would give rise to a Fuel Supplier Liability that cannot be funded entirely out of the Partnership's internally generated cash flows;

(3) amendments to the EPA that require the approval of the Partnership under the FuelCo/Project Co Fuel Supply Agreement; or

(4) settlements of any disputes under the operations interface agreement referred to in Section 3.1(4) regarding the allocation of responsibility between the O&M Contractor and the Partnership under that agreement, including in regard to any amounts payable by the Partnership under Article 6 of that agreement;

without the prior written consent of Tolko LP, such consent not to be unreasonably withheld or delayed.

**3.3 Management Agreement With Dalkia Canada Inc.** The management services agreement entered into by the Partnership with Dalkia Canada Inc. or one of its Affiliates pursuant to Section 3.1(7), and any other agreement that may be entered into by the Partnership with Dalkia Canada Inc. or any of its Affiliates, will be on market terms and conditions and the amount payable by the Partnership under the agreements will, for as long as Tolko LP is a limited partner in the Partnership, be subject to the prior written consent of Tolko LP, such consent not to be unreasonably withheld or delayed. Tolko LP hereby consents to the management services agreement to be entered into concurrently with the execution of this Agreement by the Partnership with Dalkia Canada Inc. pursuant to Section 3.1(7).

## Article 4
## STATUS AND POWERS OF THE PARTNERS

**4.1 Status of the General Partner.**

(1) The General Partner represents and warrants to the other Partners that:

(a) it is duly constituted or formed and validly existing under the Laws of the jurisdiction of its incorporation and has the corporate power, authority and capacity to enter into and give full effect to, and perform its obligations under, this Agreement;

(b) the execution and performance of this Agreement has been duly authorized by it and duly executed by or on behalf of the General Partner;

(c) the execution and performance of this Agreement does not and will not contravene the provisions of its articles, by-laws, constating documents or other organizational documents or the provisions of any agreement or other instrument to which it is a party or by which it may be bound;

(d) no authorization, consent or approval, other than those obtained, is required in connection with its execution or performance of this Agreement;

(e) this Agreement constitutes a valid and binding obligation of the General Partner enforceable against it in accordance with its terms, subject to limitations on enforcement imposed by bankruptcy, insolvency, reorganization or other Laws affecting the enforcement of the rights of creditors and others to the extent that equitable remedies are only available in the discretion of the court from which they are sought;

(f) its Partnership Interest is not a "tax shelter investment" within the meaning assigned by the Income Tax Act;

(g) it is not a "non-resident" of Canada for the purposes of the Income Tax Act; and

(h) other than as provided in Section 7.6 of this Agreement to the extent that the Partnership may be considered to be a party to this Agreement, there are currently no finance or other documents or agreements to which the Partnership is a Party that would restrict distributions under Section 7.1(1).

(2) The General Partner covenants that:

(a) the representations and warranties set out in Subsection 4.1(1) shall remain true and accurate for so long as it remains the general partner of the Partnership, including the representation and warranty that that it is not a "non-resident" of Canada for the purposes of the Income Tax Act;

(b) it shall take all actions required to qualify, continue and keep in good standing the Partnership as a limited partnership under the Laws of the Province of Manitoba and to maintain the limited liability of each Limited Partner in each jurisdiction in which the Partnership may carry on business or own or lease property;

(c) it shall devote to the conduct of the Business such time as may be reasonably required for the proper management and administration thereof; and

(d) it shall make, or cause to be made, on its own behalf and on behalf of the Partnership, all such elections, declarations, allocations or filings necessary or desirable throughout the term of the Project.

**4.2 Status of the Limited Partners.**

(1) Each of the Limited Partners, severally (and not jointly and severally), represents and warrants for itself to the other Partners that:

(a) it is duly constituted or formed and validly existing under the Laws under which it was constituted or formed and has the power, authority and capacity to enter into and give full effect to, and perform its obligations under, this Agreement;

(b) the execution and performance of this Agreement has been duly authorized by it and duly executed by or on behalf such Limited Partner;

(c) the execution and performance of this Agreement does not and will not contravene the provisions of its articles, by-laws, constating documents or other organizational documents or the provisions of any agreement or other instrument to which it is a party or by which it may be bound;

(d) no authorization, consent or approval, other than those obtained, is required in connection with its execution or performance of this Agreement;

(e) this Agreement constitutes a valid and binding obligation of such Limited Partner enforceable against it in accordance with its terms, subject to limitations on enforcement imposed by bankruptcy, insolvency, reorganization or other Laws

affecting the enforcement of the rights of creditors and others to the extent that equitable remedies are only available in the discretion of the court from which they are sought;

(f) its Partnership Interest is not a "tax shelter investment" within the meaning assigned by the Income Tax Act; and

(g) it is not a "non-resident" of Canada for the purposes of the Income Tax Act or, in the case of a Limited Partner that is a partnership, it is a "Canadian partnership" within the meaning assigned by the Income Tax Act.

(2) Each Limited Partner, severally (and not jointly and severally), covenants for itself that its representations and warranties set out in Subsection 4.2(1) shall remain true and accurate for so long as it remains a limited partner of the Partnership, including the representation and warranty that it is not a "non-resident" of Canada for the purposes of, or is a "Canadian partnership" within the meaning assigned by, the Income Tax Act.

(3) Notwithstanding Article 11, each Limited Partner covenants and agrees that it will not transfer or purport to transfer any or all of its Units to any Person who is or would be unable to truthfully make the representations and warranties in Subsection 4.2(1).

**4.3 Compliance with Laws.** Each Limited Partner will, on request by the General Partner, immediately execute such certificates, documents and other instruments as may be necessary to comply with any law or regulation of any jurisdiction in Canada pertaining to the continuation, operation and maintenance of the Partnership in good standing.

**4.4 Binding Effect of Agreement.** Any Person admitted to the Partnership as a Partner shall be subject to and bound by all the provisions of this Agreement as if originally a Party to this Agreement as from the date of its admission.

**4.5 Unlimited Liability of General Partner.** The General Partner will have unlimited liability for the debts, liabilities and obligations of the Partnership.

**4.6 Limited Liability of Limited Partners.**

(1) Subject to the provisions of applicable Laws:

(a) the liability of a Limited Partner for the debts, liabilities and obligations of the Partnership will be limited to the amount of such Limited Partner's Capital Contribution and a Limited Partner will not be liable for any further claims or assessments, including, for greater certainty, the debts, liabilities and obligations of any other Partner; and

(b) no provision of this Agreement will have the effect of giving the General Partner the authority or power to increase the liability of a Limited Partner.

## Article 5
## UNITS

**5.1 Number of Units.**

(1) The authorized capital in the Partnership shall consist of an unlimited number of Class A Units, an unlimited number of Class B Units and an unlimited number of Class C Units. The Partnership Interest of each Partner will be represented by the number of Units issued to such Partner.

(2) The Partnership shall issue Units only as fully-paid and non-assessable upon or simultaneously with receipt of the subscription price payable for such Units.

**5.2 Attributes of Units.**

(1) Each Partner shall have the following rights and obligations in respect of the Class A Units, if any, held by it:

(a) the right to one (1) vote for each Class A Unit held by such Partner; and

(b) the right to distributions (including upon dissolution, liquidation or winding up of the Partnership) made in accordance with Article 7.

(2) Each Partner shall have the following rights and obligations in respect of the Class B Units, if any, held by it:

(a) the right to one (1) vote for each Class B Unit held by such Partner; and

(b) the right to distributions (including upon dissolution, liquidation or winding up of the Partnership) made in accordance with Article 7.

(3) Each Partner shall have the following rights and obligations in respect of the Class C Units, if any, held by it:

(a) the right to distributions (including upon dissolution, liquidation or winding-up of the Partnership) made in accordance with Article 7.

(4) Upon each distribution on the Class C Units pursuant to Section 7.1(2)(a), a number of Class C Units equal to the dollar amount of the distributions actually paid to the Class C Partners shall be automatically cancelled effective on the first day of the next Fiscal Year after the Fiscal Year in which the distribution was made. For greater clarity, once all Class C Partner's Class C Units are cancelled, that Partner will cease to be a Class C Partner until it subscribes for additional Class C Units, if applicable.

**5.3 Priorities and Rights of Units.** Except as expressly provided in this Agreement, no Partner shall have any preference, priority or right in any circumstance over any other Partner in respect of the Units held by it (other than arising out of or resulting from the number and type of such Units, respectively, held by such Partner).

**5.4 Units Outstanding.**

(1) The Parties acknowledge that the Partners hold such number of Units as set forth below on the date hereof in the amounts and the type set forth opposite their names:

| Unitholder | Number and Class of Units | Subscription Price ($) | Percentage of Units Outstanding |
|---|---|---|---|
| **NV HoldCo LP** | 7,499 Class A Units | $1 per Unit | 74.99% (of all Units) |

| Unitholder | Number and Class of Units | Subscription Price ($) | Percentage of Units Outstanding |
|---|---|---|---|
| **Tolko LP** | 2,500 Class B Units | $1 per Unit | 25% (of all Units) |
| **General Partner** | 1 Class A Unit | $1 per Unit | 0.01% (of all Units) |
| **TOTAL:** | **10,000 Units** | **$1 per Unit** | **100% of all Units** |

(2) Subject to the provisions of this Agreement, no Units, in addition to the Units issued and outstanding as set out in Section 5.4(1), may be issued or offered for issuance by the Partnership, without the consent of the General Partner.

**5.5 Fair Market Value of Class A and B Units.** In any case when the Fair Market Value of any Class A Unit and Class B Unit is required, including in Section 11.1(2) and Section 11.2(2) but excluding Section 11.8(3) and Section 13.5(2), the Fair Market Value will be as agreed to by all of the Partners at that time, and if they do not agree then as determined by a valuator experienced in the valuation of energy projects, independent from the Parties, appointed by the General Partner. The valuator shall determine the Fair Market Value as an expert and not as an umpire or arbitrator. The valuator may seek such information from the Parties as may, in the opinion of the valuator, be reasonably required to effectively determine the Fair Market Value and each Party shall provide such information to the valuator if it is in that Party's possession or control.

## Article 6
## CAPITAL CONTRIBUTIONS

**6.1 Capital.** The capital of the Partnership shall be the aggregate amount of the Capital Contributions of the Limited Partners and the General Partner.

**6.2 Capital Contributions.** As at the date hereof, the initial Capital Contribution of each Partner is $1.00 for each Unit held by such Partner.

**6.3 Withdrawal of Capital.** No Partner will be entitled to withdraw or make a demand for withdrawal of its Capital Contribution in whole or in part except upon the dissolution and termination of the Partnership pursuant to or in accordance with the terms and conditions of this Agreement.

**6.4 Capital Account**

(1) The General Partner will establish, or cause to be established, a separate Capital Account on the books of the Partnership for each Partner to record the aggregate Capital Contributions of such Partner with respect to each class of Units held by such Partner.

(2) On receipt of a Capital Contribution, the General Partner will add to, or cause to be added to, the Capital Account of a Partner, with respect to the Units in respect of which a Capital Contribution was made, the amount of such Capital Contribution.

**6.5 Current Account.** The General Partner will establish, or cause to be established, a separate account on the books of the Partnership for each Partner in respect of each class of Units held by such Partner to which the amount of income of the Partnership for accounting purposes allocated to each Partner in respect of each class of Units will be added and to which losses of the Partnership for accounting purposes and all advances or distributions to Partners in respect of each class of Units will be subtracted. For greater certainty the balance of the Current Account may be a negative amount.

**6.6 No Partnership Interest Payable.** No interest will be paid or payable to any Partner on any credit balance in its Capital Account or Current Account unless approved by the Partners and in accordance with the Act.

## Article 7
## DISTRIBUTIONS

### 7.1 Distributions

(1) Subject to the restrictions in any finance documents to which the Partnership is a Party, the provisions of Section 7.6, applicable Laws and to there being adequate provision for capital expenditures, working capital, accruals for liabilities and adequate reserves, the Partnership will use its commercially reasonable efforts to distribute one hundred percent (100%) of all amounts that are available for distribution, including amounts referred to in Section 11.3(4), on a quarterly basis.

(2) Except as provided in Section 11.3(5) in the case of subscription prices being returned to Partners as provided in Section 11.3(5), distributions will be made in the following priority:

(a) first, if any Class C Units are issued and outstanding, distributions will be made to the Class C Partners up to, in the aggregate, the amount of the Capital Contribution made by each such Class C Partner in respect of the Class C Units, such distributions to be made to the Class C Partners in their respective Class C Pro-Rata Portion; and

(b) second, once distributions equal to the Capital Contribution of the Class C Units have been made or if there are no Class C Units issued and outstanding:

(i) if any Class B Units are issued and outstanding:

a. seventy-five percent (75%) to the Class A Partners in their respective Class A Pro-Rata Portion; and

b. twenty-five percent (25%) to the Class B Partners in their respective Class B Pro-Rata Portion; or

(ii) if no Class B Units are issued and outstanding, to the Class A Partners in their respective Class A Pro-Rata Portion.

**7.2 Advances.** Distributions otherwise payable to a Limited Partner during a year under Section 7.1, upon the reasonable request of a Limited Partner, shall not be paid to the Limited Partner during the year, but shall be paid to such Limited Partner immediately after the end of the year. The amount otherwise payable to that Limited Partner on a distribution date as a cash distribution shall instead be loaned to the Limited Partner on an interest-free basis, which loan shall be repaid immediately after the end of the year by way of set off against the cash distribution then payable to the Limited Partner pursuant to this Section 7.2. For purposes of this Agreement, except in this Section 7.2, such loans shall be considered cash distributions.

**7.3 Blocked Distributions.** Notwithstanding any other provision of this Agreement, if (i) Tolko or Tolko LP is in breach of its obligations under any Tolko Fuel Supplier Liability Agreement, or (ii) Tolko is in breach of any obligation to indemnify and save harmless the Partnership under section 17.2(1) of the Tolko Fuel Supply Agreement (a "**Trigger Event**"), then, from the date of any such breach and during the continuance of the Trigger Event, distributions that would have otherwise been made to, on behalf of or for

the benefit of Tolko LP up to a maximum amount equal to the Remaining Potential Tolko Liability at the time of any such distributions will be retained by the Partnership and not distributed to Tolko LP (all distributions that would have otherwise been paid to Tolko LP that are retained by the Partnership are referred to as the "**Blocked Distributions**") until:

(a) the Partnership is issuing Units pursuant to Section 11.3, including pursuant to Section 11.3(4), on any specific date, at which time the Blocked Distributions will be used as payment by Tolko LP for the issuance of Class B Units to Tolko LP up to the lesser of (i) the number of Class B Units to be issued to Tolko LP pursuant to Section 11.3 on such specific date, and (ii) the amount of the Blocked Distributions; or

(b) the Trigger Event has ceased, at which time the Blocked Distributions (net of any amount of the Blocked Distributions used as payment by Tolko LP for the issuance of Units to Tolko LP pursuant Section 11.3 as referred to in Section 7.3(a) above) will, subject to the provisions of Section 7.6, be distributed and paid to either Tolko LP or the Escrow Agent in accordance with Section 7.7.

Any Blocked Distributions shall remain the property of the Partnership until it is distributed and paid to either Tolko LP or the Escrow Agent in accordance with Section 7.7, but for all other purposes, including for the purposes of Section 6.5 and Article 8 and for purposes of payment of Units as contemplated in Section 7.3(a), a Blocked Distribution will be treated as a distribution at that time to Tolko LP.

**7.4 Maximum Blocked Distributions.** The aggregate amount of all Blocked Distributions shall not exceed the Remaining Potential Tolko Liability at that time.

**7.5 Set-Off.** The General Partner shall set-off against any distribution that would otherwise be payable to a Partner the amounts due and payable by such Partner or any of its Affiliates to the Partnership. Similarly, if any amount is due and payable by a Partner or one of its Affiliates (the "**Debtor Partner**") to another Partner or one of its Affiliates (the "**Creditor Partner**") in connection with the Project, the General Partner, at the request of the Creditor Partner, shall pay any distribution that would otherwise be payable to the Debtor Partner to the Creditor Partner and such payment shall be repayment of such amount by the Debtor Partner to the Creditor Partner. The General Partner shall be entitled to withhold from any distribution payable to a Partner the amount of all claims by the Partnership or a Creditor Partner against such Partner or any of its Affiliates, during the period where any such claim is being pursued in good faith by the Partnership or the Creditor Partner, that, if finally determined in favour of the Partnership or the Creditor Partner, could be set-off pursuant to this Section 7.5. Distributions payable to a Partner which are set-off against any distribution that would otherwise be payable to a Partner or paid to a Creditor Partner or withheld pursuant to this Section 7.5 will be treated as distributions at that time to the Partner at the time of the first to occur between set-off, payment or withholding for purposes of Section 6.5 and Article 8.

**7.6 Conditions to Distributions**

(1) Notwithstanding any other provision of this Agreement, no distribution shall be made on the Class A Units or the Class B Units without the consent of NV HoldCo LP and Fengate (FSJ) Holdings LP:

(a) during any financial quarter of Project Co commencing with the fourth financial quarter of Project Co following COD (as such term is defined in the EPA) and continuing until the end of the seventh financial quarter of Project Co following COD (as such term is defined in the EPA), if as of the last day of the financial

quarter the aggregate delivery of fuel under the FuelCo/Project Co Fuel Supply Agreement since COD (as such term is defined in the EPA) that was produced at the Sawmill and/or sourced under one or more Long Term Fuel Supply Subcontracts during the prior four financial quarters was less than 75,000 ODTs (or such lesser quantity as provided below in the case where there has been a Suspension Period) on a rolling four-financial quarter basis (i.e. measured at the end of each financial quarter for the previous four-financial quarter period) and as a result Project Co is not entitled to make distributions to its special partners due to the restrictions on Project Co in the Credit Agreement;

(b) during any financial quarter of Project Co commencing with the eighth financial quarter of Project Co following COD (as such term is defined in the EPA) and each financial quarter thereafter, if as of the last day of the financial quarter the aggregate delivery of fuel under the FuelCo/Project Co Fuel Supply Agreement that was produced at the Sawmill and/or sourced under one or more Long Term Fuel Supply Subcontracts during the prior eight financial quarters was less than an average of 75,000 ODTs/year (150,000 ODTs for such eight financial quarters) (or such lesser quantity as provided below in the case where there has been a Suspension Period) on a rolling eight financial-quarter basis (i.e. measured at the end of each financial quarter of Project Co for the previous eight financial-quarter period) and as a result Project Co is not entitled to make distributions to its special partners due to the restrictions on Project Co in the Credit Agreement;

(c) during any financial quarter of Project Co commencing with the first financial quarter of Project Co following COD (as such term is defined in the EPA) and continuing until the end of the third quarter of Project Co following COD (as such term is defined in the EPA), if as of the last day of the financial quarter the average price at which the Partnership purchased fuel during such financial quarter for delivery to Project Co under the FuelCo/Project Co Fuel Supply Agreement was greater than the difference between: (i) the average price at which Project Co purchased fuel from the Partnership under the FuelCo/Project Co Fuel Supply Agreement during such financial quarter, minus (ii) $3.32 per ODT, and as a result Project Co is not entitled to make distributions to its special partners due to the restrictions on Project Co in the Credit Agreement; and

(d) during any financial quarter of Project Co commencing with the fourth financial quarter of Project Co following COD (as such term is defined in the EPA) and each financial quarter thereafter, if as of the last day of the financial quarter the average price at which the Partnership purchased fuel during the preceding completed four financial quarters for delivery to Project Co under the FuelCo/Project Co Fuel Supply Agreement was greater than the difference between: (i) the average price at which Project Co purchased fuel from the Partnership under the FuelCo/Project Co Fuel Supply Agreement during such four financial quarter period, minus (ii) $3.32 per ODT, on a rolling four-financial quarter basis (i.e. measured at the end of each financial quarter for the previous four-financial quarter period), and as a result Project Co is not entitled to make distributions to its special partners due to the restrictions on Project Co in the Credit Agreement.

In the case where delivery of fuel under the FuelCo/Project Co Fuel Supply Agreement has been suspended for an event of "Force Majeure" (as defined in the FuelCo/Project Co Fuel Supply Agreement) claimed by

the Partnership and accepted by Project Co under the FuelCo/Project Co Fuel Supply Agreement (a "**Suspension Period**"), the 75,000 ODTs/year referred to in Section 7.6(1)(a) (in the case where any of the Suspension Period occurred during the time period referred to in Section 7.6(1)(a)) and the average of 75,000 ODT/year referred to in Section 7.6(1)(b) (in the case where any of the Suspension Period occurred during the time period referred to in Section 7.6(1)(b)) will be reduced to the amount obtained when 75,000 ODTs is multiplied by: (i) the number of days during the applicable period that were not part of the Suspension Period, divided by (ii) the total number of days in the applicable period (including the number of days during the applicable period that were part of the Suspension Period), provided that the Suspension Period(s) will not apply for more than a total of 365 calendar days in any eight-quarter period in aggregate.

### 7.7 Security for Tolko's and Tolko LP's Obligations

(1) As security for the payment by Tolko and Tolko LP of the Maximum Aggregate Potential Tolko Liability:

(a) provided Tolko is not at the time subject to a Required Escrow, Tolko LP may, prior to the Fuel Supply Commencement Date, and, once each year thereafter within 120 days following any financial year-end of Tolko, deliver to the Partnership a Tolko Fuel Supplier Liability Agreement signed by Tolko and Tolko LP for all or any portion of any Remaining Potential Tolko Liability at the time of execution of such Tolko Fuel Supplier Liability Agreement and, if requested by the Partnership, a legal opinion from Tolko's legal counsel in the form attached as Schedule 4 to the Fuel Supplier Liability Agreement with respect to such Tolko Fuel Supplier Liability Agreement, and upon receipt of such a Tolko Fuel Supplier Liability Agreement and, if requested by the Partnership, legal opinion, the Partnership shall execute and deliver the Tolko Fuel Supplier Liability Agreement, shall cause the Tolko Fuel Supplier Liability Agreement to be executed and delivered by Dalkia International S.A. and NV HoldCo LP, shall, if the Partnership has requested a legal opinion from Tolko's counsel, cause the Partnership's legal counsel to deliver a legal opinion in the form attached as Schedule 5 to the Fuel Supplier Liability Agreement with respect to such Tolko Fuel Supplier Liability Agreement and shall reimburse the reasonable costs and expenses incurred by Tolko for the issuance of the legal opinion by Tolko's legal counsel;

(b) a Tolko Fuel Supplier Liability Agreement delivered by Tolko LP pursuant to Section 7.7(1)(a) may, provided Tolko is not at the time subject to a Required Escrow, be provided in exchange for existing Escrowed Distributions that are held by the Escrow Agent in escrow pursuant to the Escrow Agreement entered into pursuant to Section 7.7(2) or in substitution for future Escrowed Distributions that would in the absence of the Fuel Supplier Liability Agreement be paid to the Escrow Agent and held by the Escrow Agent in escrow pursuant to the Escrow Agreement entered into pursuant to Section 7.7(2), or for a combination of both, and:

(i) if Tolko LP delivers to the Partnership a Tolko Fuel Supplier Liability Agreement and, if requested by the Partnership, a legal opinion, pursuant to Section 7.7(1)(a) in exchange for any existing Escrowed Distributions that are held by the Escrow Agent in escrow pursuant to the Escrow Agreement entered into pursuant to Section 7.7(2), then provided Tolko is not at that time subject to a Required Escrow the amount of the existing

Escrowed Distributions for which the Tolko Fuel Supplier Liability Agreement has been provided in substitution shall be released from escrow and disbursed to Tolko LP as contemplated in Section 7.7(3)(c);

(ii) if Tolko LP delivers to the Partnership a Tolko Fuel Supplier Liability Agreement and, if requested by FuelCo, a legal opinion, pursuant to Section 7.7(1)(a) in substitution for any future Escrowed Distributions that would, in the absence of the Tolko Fuel Supplier Liability Agreement, be paid by the Partnership to the Escrow Agent and held by the Escrow Agent in escrow pursuant to the Escrow Agreement entered into pursuant to Section 7.7(2), then those future Escrowed Distributions shall be paid to Tolko LP rather than to the Escrow Agent unless Tolko subsequently becomes subject to a Required Escrow;

(iii) if Tolko subsequently becomes subject to a Required Escrow, the Tolko Fuel Supplier Liability Agreement shall terminate to the extent it applies to any future Escrowed Distributions but shall remain valid and in effect to the extent it applies to any Escrowed Distributions that have already been released from escrow and disbursed to Tolko LP as a result of the exchange or substitution of that Tolko Fuel Supplier Liability Agreement for the Escrowed Distributions that have been released and disbursed to Tolko LP pursuant to Section 7.7(1)(b)(i) and for the Escrowed Distributions paid directly to Tolko LP instead of to the Escrow Agent pursuant to Section 7.7(1)(b)(ii) (and Tolko LP and the Partnership shall, if requested by either of them, replace that Tolko Fuel Supplier Liability Agreement with a Tolko Fuel Supplier Liability Agreement and, if requested by the Partnership, legal opinions under Section 7.7(1)(a) that only applies to the amount of the Escrowed Distributions that have by that time been either released from escrow and disbursed to Tolko LP or paid directly to Tolko LP instead of to the Escrow Agent);

(c) if at any time after the Fuel Supply Commencement Date there is any portion of any Remaining Potential Tolko Liability at that time for which Tolko LP has not delivered to the Partnership a Tolko Fuel Supplier Liability Agreement pursuant to Section 7.7(1)(a) or for which a Tolko Fuel Supplier Liability Agreement has been terminated pursuant to Section 7.7(1)(b)(iii) with respect to future Escrowed Distributions, any distributions that are subsequently made pursuant to Section 7.1 on the Class B Units held by Tolko LP up to a maximum amount equal to any Remaining Potential Tolko Liability at that time for which Tolko LP has not delivered to the Partnership a Tolko Fuel Supplier Liability Agreement pursuant to Section 7.7(1)(a) or for which a Tolko Fuel Supplier Liability Agreement has been terminated pursuant to Section 7.7(1)(b)(iii) with respect to future Escrowed Distributions will, except as otherwise provided in Section 7.7(1)(d), be paid by the Partnership to the Escrow Agent and held by the Escrow Agent in escrow pursuant to the Escrow Agreement entered into pursuant to Section 7.7(2); and

(d) notwithstanding Section 7.7(1)(c), if at any time after the Fuel Supply Commencement Date there is any Outstanding Potential Tolko Portion of a Fuel Supplier Liability and a subsequent Increase in Tolko's Actual Liability that is not paid using Escrowed Fuel Price Payments pursuant to section 7.7(1)(d) of the Tolko Fuel Supply Agreement or Blocked Distributions pursuant to Section 7.3(a),

any distributions that are subsequently made pursuant to Section 7.1 on the Class B Units held by Tolko LP up to a maximum amount equal to the Increase in Tolko's Actual Liability will be kept by the Partnership for the issuance of Units to Tolko LP pursuant to Section 11.3 instead of being paid to the Escrow Agent pursuant to Section 7.7(1)(c).

Any Escrowed Distributions shall be the property of Tolko LP as provided under Section 7.7(2)(a) or the property of the Partnership as provided under Section 7.7(2)(b), but for all other purposes, including for the purposes of Section 6.5 and Article 8 and for purposes of payment of Units as contemplated in Section 11.3(4), Escrowed Distributions will be treated as a distribution at that time to Tolko LP.

(2) Prior to the Fuel Supply Commencement Date, the Parties will (i) engage the Escrow Agent to act as escrow agent pursuant to the Escrow Agreement, (ii) negotiate in good faith and acting reasonably to settle the Escrow Agreement with the Escrow Agent, and (iii) execute and deliver the Escrow Agreement with the Escrow Agent once it is settled. The Escrow Agreement shall require the Escrow Agent to hold any Escrowed Distributions paid to it by the Partnership pursuant to Section 7.7(1)(c) and any Escrowed Fuel Price Payments paid to it pursuant to section 7.7(1)(c) of the Tolko Fuel Supply Agreement in escrow and not disburse them except as provided in the Escrow Agreement. The Escrowed Distributions shall, while they are held by the Escrow Agent:

(a) be the property of Tolko LP except as otherwise provided in Section 7.7(2)(b), and as general continuing security for the obligation of Tolko LP to subscribe for Units pursuant to Section 11.3, the obligation of Tolko under section 17.2 of the Tolko Fuel Supply Agreement and the obligations of Tolko and Tolko LP under any Tolko Fuel Supplier Liability Agreements (collectively, the "**Tolko Secured Obligations**"), Tolko LP hereby grants a security interest to the Partnership, Dalkia International S.A. and NV Holdco LP in all of the Escrowed Distributions that are held by the Escrow Agent at any time and from time to time while they are the property of Tolko. Upon default by Tolko or Tolko LP in payment or performance of the Tolko Secured Obligations, each of the Partnership, Dalkia International S.A. and NV Holdco LP may exercise any or all of the remedies available to a secured creditor under applicable Laws; and

(b) notwithstanding Section 7.7(2)(a), the Partnership may, with the approval of Tolko based on the most recent annual financial statements of Dalkia International S.A., such approval not to be unreasonably withheld, provide a guarantee of Dalkia International S.A. in a form to be negotiated in good faith between Dalkia International S.A and Tolko LP, acting reasonably, based on the form of the Dalkia Fuel Supply Guarantee that is acceptable to Tolko LP and Dalkia International S.A., each acting reasonably, pursuant to which Dalkia International S.A. guarantees the payment to Tolko LP of any amount of the Escrowed Distributions held by the Escrow Agent that are to be released from escrow and returned to Tolko LP in accordance with the Escrow Agreement as contemplated in Section 7.7(3) and the repayment to Tolko of any amount of the Escrowed Fuel Price Payments held by the Escrow Agent that are to be released from escrow and returned to Tolko in accordance with the Escrow Agreement as contemplated in section 7.7(3) of the Tolko Fuel Supply Agreement (other than the failure of those Escrowed Distributions to be released from escrow and returned to Tolko LP or those Escrowed Fuel Price Payments to be released from escrow and returned to Tolko due to any act or omission of Tolko LP or Tolko), and a legal opinion from Dalkia International S.A.'s legal counsel addressed to Tolko and Tolko LP in a

form to be settled for the guarantee based on the form attached as Schedule D to this Agreement that is acceptable to Tolko and Tolko LP, acting reasonably, upon which the Escrowed Distributions shall become the property of the Partnership but shall be repayable by the Partnership to Tolko LP in the circumstances contemplated in Section 7.7(3), Tolko LP will (and will cause Tolko to), and the General Partner and the Partnership will, notify the Escrow Agent pursuant to section 4 of the Escrow Agreement that the Escrowed Distributions are to be held for the Partnership instead of Tolko LP, and as general continuing security for the obligation of the Partnership to repay such amounts to Tolko LP in the circumstances contemplated in Section 7.7(3) (the "**Partnership Secured Obligations**") the Partnership hereby grants a security interest to Tolko LP in all of the Escrowed Distributions that are held by the Escrow Agent at any time and from time to time while they the property of the Partnership. Upon default by the Partnership in payment or performance of the Partnership Secured Obligations, Tolko LP may exercise any or all of the remedies available to a secured creditor under applicable Laws.

(3) Tolko LP and the Partnership will execute and deliver to the Escrow Agent from time to time an Escrowed Distributions Release Notice directing the Escrow Agent to disburse the Escrowed Distributions as follows:

(a) if Tolko does not make an indemnity payment to the Partnership as and when required under section 17.2 of the Tolko Fuel Supply Agreement, then, unless the obligation to make the indemnity payment is being disputed in good faith by Tolko, Tolko LP and the Partnership shall (except to the extent the indemnity payment is satisfied by the disbursement of Escrowed Fuel Price Payments pursuant to section 7.7(3)(a) of the Tolko Fuel Supply Agreement) execute and deliver to the Escrow Agent an Escrowed Distributions Release Notice directing the Escrow Agent to release and disburse the Escrowed Distributions to the Partnership in the amount required to make the payment required under section 17.2 of the Tolko Fuel Supply Agreement up to the lesser of (i) the amount of the Escrowed Distributions being held by the Escrow Agent at that time, and (ii) the Maximum Actual Tolko Liability at that time (and if the amount payable by Tolko under section 17.2 of the Tolko Fuel Supply Agreement is payable to any "FuelCo Indemnified Person" (as defined in the Tolko Fuel Supply Agreement) other than the Partnership, the Partnership shall accept payment of such amount on behalf of such "FuelCo Indemnified Person" and payment of such amount to the Partnership shall be full satisfaction of Tolko's obligation to pay such amount under section 17.2 of the Tolko Fuel Supply Agreement);

(b) if the Partnership requires funds to pay a Fuel Supplier Liability that it is not able to fund from cash flow generated by its operations, there are no Tolko Fuel Supplier Liability Agreements in effect for the lesser of (i) 25% of such Fuel Supplier Liability, and (ii) the Maximum Actual Tolko Liability at that time, and the Partnership is offering Class B Units to Tolko LP pursuant to Section 11.3, then unless the Escrowed Distributions are being kept by the Partnership for the issuance of Units to Tolko LP pursuant to Section 7.7(1)(d) Tolko LP and the Partnership shall (except to the extent such amount is being paid pursuant to a Tolko Fuel Supplier Liability Agreement, using Escrowed Fuel Price Payments or using Blocked Distributions) execute and deliver to the Escrow Agent an Escrowed Distributions Release Notice directing the Escrow Agent to release and

disburse the Escrowed Distributions to the Partnership in the amount required to make the payment required up to the lesser of (i) the amount of the Escrowed Distributions being held by the Escrow Agent at that time, and (ii) the Maximum Actual Tolko Liability at that time;

(c) if Tolko LP delivers to the Partnership a Tolko Fuel Supplier Liability Agreement and, if requested by the Partnership, legal opinion pursuant to Section 7.7(1)(a) in substitution of all or a specified amount of any existing Escrowed Distributions, then Tolko LP and the Partnership shall execute and deliver to the Escrow Agent an Escrowed Distributions Release Notice directing the Escrow Agent to release and disburse such amount, minus an amount equal to the then Outstanding Liabilities, from the existing Escrowed Distributions to Tolko LP as contemplated in Section 7.7(1)(b)(i) and, when all such Outstanding Liabilities have been resolved, Tolko LP and the Partnership shall execute and deliver to the Escrow Agent an Escrowed Distributions Release Notice directing the Escrow Agent to release and disburse such amount of Outstanding Liabilities to whichever of Tolko, FuelCo, Dalkia International S.A. or NV HoldCo LP, as the case may be, those amounts are payable to;

(d) if there is a Tolko Fuel Supplier Liability Agreement in effect and:

(i) the Partnership has delivered to Tolko and Tolko LP a "Request for Payment" under and as defined in the Tolko Fuel Supplier Liability Agreement and Tolko and Tolko LP have not made the payment required to the Partnership under the Tolko Fuel Supplier Liability Agreement as and when required by the Tolko Fuel Supplier Liability Agreement, then Tolko LP and the Partnership shall (except to the extent such amount is being paid using Escrowed Fuel Price Payments or Blocked Distributions) execute and deliver to the Escrow Agent an Escrowed Distributions Release Notice directing the Escrow Agent to release and disburse the Escrowed Distributions to the Partnership in the amount required to make the payment required up to the lesser of (i) the amount of the Escrowed Distributions being held by the Escrow Agent at that time, and (ii) the Maximum Actual Tolko Liability at that time; or

(ii) either one or both of Dalkia International S.A. and NV HoldCo LP has delivered to Tolko and Tolko LP a "Demand for Payment" under and as defined in the Tolko Fuel Supplier Liability Agreement and Tolko and Tolko LP have not made the payment required to Dalkia International S.A. or NV HoldCo LP under the Tolko Fuel Supplier Liability Agreement as and when required by the Tolko Fuel Supplier Liability Agreement, then Tolko LP and the Partnership shall (except to the extent such amount is being paid using Escrowed Fuel Price Payments or Blocked Distributions) execute and deliver to the Escrow Agent an Escrowed Distributions Release Notice directing the Escrow Agent to release and disburse the Escrowed Distributions to Dalkia International S.A. or NV HoldCo LP in the amount required to make the payment required up to the lesser of (i) the amount of the Escrowed Distributions being held by the Escrow Agent at that time, and (ii) the Maximum Actual Tolko Liability at that time;

(e) if the amount of the Escrowed Distributions at any time exceeds the amount of the Remaining Potential Tolko Liability at that time, then Tolko LP and the Partnership shall execute and deliver to the Escrow Agent an Escrowed Distributions Release Notice directing the Escrow Agent to release and disburse to Tolko LP the difference between (i) the amount of the Escrowed Distributions being held by the Escrow Agent at that time, minus (ii) the amount of the Remaining Potential Tolko Liability at that time; and

(f) at the end of the initial term of the Tolko Fuel Supply Agreement under section 2.1 of the Tolko Fuel Supply Agreement (regardless of whether or not that term is extended pursuant to section 2.2 of the Tolko Fuel Supply Agreement) Tolko LP and the Partnership shall execute and deliver to the Escrow Agent an Escrowed Distributions Release Notice directing the Escrow Agent to release and disburse:

(i) to Tolko LP: (A) if at that time the amount of the Escrowed Distributions exceeds the amount of the Maximum Actual Tolko Liability, the difference between (i) the amount of the Escrowed Distributions being held by the Escrow Agent, minus (ii) the amount of the Maximum Actual Tolko Liability, plus (B) if after the release contemplated in item (A) above there are any remaining Escrowed Distributions being held by the Escrow Agent, the difference between (i) the amount of those remaining Escrowed Distributions, minus (ii) the sum of (x) the aggregate amount of any outstanding liabilities of Tolko and any liabilities asserted in good faith by the Partnership (including any that are being disputed in good faith by Tolko) under section 17.2 of the Tolko Fuel Supply Agreement at that time, (y) the aggregate amount of any outstanding liabilities of Tolko and Tolko LP and any liabilities asserted in good faith by the Partnership or by Dalkia International S.A. or NV HoldCo LP (including any that are being disputed in good faith by Tolko or Tolko LP) under any outstanding Tolko Fuel Supplier Liability Agreements at that time, and (z) 25% of the aggregate amount of any Fuel Supplier Liability (up to the Maximum Actual Tolko Liability) asserted in good faith by Project Co at that time to the extent not already covered in items (x) and (y) above (the sum of (x), (y) and (z) at any specific time, the then "**Outstanding Liabilities**"); and

(ii) once (x) the aggregate amount of any outstanding liabilities of Tolko and any liabilities asserted in good faith by the Partnership (including any that are being disputed in good faith by Tolko) under section 17.2 of the Tolko Fuel Supply Agreement at that time, (y) the aggregate amount of any outstanding liabilities of Tolko and Tolko LP and any liabilities asserted in good faith by the Partnership or by Dalkia International S.A. or NV HoldCo LP (including any that are being disputed in good faith by Tolko or Tolko LP) under any outstanding Tolko Fuel Supplier Liability Agreements at that time, and (z) 25% of the aggregate amount of any Fuel Supplier Liability (up to the Maximum Actual Tolko Liability) asserted in good faith by Project Co at that time to the extent not already covered in items (x) and (y) above, have been resolved, the remaining amount of the Escrowed Distributions to whichever of Tolko, FuelCo, Dalkia International S.A. or NV HoldCo LP, as the case may be, those amounts are payable to.

**7.8 Provision of Auditor's Certificate**

(1) As a condition precedent to the delivery by Tolko and Tolko LP of any Tolko Fuel Supplier Liability Agreement and within 120 days following any financial year-end of Tolko in which a Tolko Fuel Supplier Liability Agreement is either provided by Tolko pursuant to Section 7.7(1)(a) or was previously provided and is still in effect, Tolko LP shall provide to the Chief Financial Officer or Treasurer of Dalkia Canada Inc. (and Tolko LP shall be entitled to request confirmation from Dalkia Canada Inc. of the name of Dalkia Canada Inc.'s then current Chief Financial Officer or Treasurer in that respect, which confirmation shall be provided promptly upon request), provided he or she has signed and is bound by a valid and current non-disclosure agreement with Tolko in the form of Tolko's standard non-disclosure agreement, a certificate signed by a duly authorized representative of Tolko's auditors, addressed to the Chief Financial Officer or Treasurer of Dalkia Canada Inc., as the case may be, on the letterhead of such auditors, confirming without qualifications, on the basis of Tolko's annual audited consolidated financial statements for that financial year prepared by such auditors and using Accounting Standards for Private Enterprise as at January 1, 2014, that at the end of such financial year:

(a) Tolko's Debt to Equity Ratio was lower than 1; and

(b) Tolko's Net Assets were greater than $400,000,000.

## Article 8
## DETERMINATION AND ALLOCATION OF NET INCOME AND LOSS

**8.1 Determination of Net Income or Loss.** At the end of each Fiscal Year of the Partnership or for any stub period ending on the date of dissolution of the Partnership, the net profits or losses of the Partnership for such year or period shall be determined by the General Partner in accordance with GAAP, consistently applied.

**8.2 Allocation of Income or Loss for Accounting Purposes.**

(1) The loss of the Partnership for accounting purposes for each Fiscal Year shall be allocated at the end of each Fiscal Year as follows:

(a) First, to the Class C Partners at the end of the Fiscal Year in an amount up to, but not exceeding, the aggregate amount of the Capital Account and Current Account balance at the end of the Fiscal Year in respect of the Class C Units held by the Class C Partner, such loss to be allocated among the Class C Partners in proportion to each Class C Partner's aggregate Capital Account and Current Account balance at the end of the Fiscal Year and once a Class C Partner's aggregate Capital Account and Current Account reaches zero as a consequence of the allocation of a loss, any remaining loss shall be further allocated among only those Class C Partners still having a positive aggregate Capital Account and Current Account Balance; and

(b) Second:

(i) if any Class B Units are issued and outstanding:

a. seventy-five percent (75%) to the Class A Partners at the end of such Fiscal Year in their respective Class A Pro-Rata Portion at the end of the Fiscal Year; and

b. twenty-five percent (25%) to the Class B Partners at the end of such Fiscal Year in their respective Class B Pro-Rata Portion at the end of the Fiscal Year; or

(ii) if no Class B Units are issued and outstanding, to the Class A Partners at the end of such Fiscal Year in their respective Class A Pro-Rata Portion at the end of the Fiscal Year.

(2) The income of the Partnership for accounting purposes for each Fiscal Year shall be allocated at the end of each Fiscal Year as follows:

(a) First, to each of the Class C Partners during the Fiscal Year in an amount up to, but not exceeding, the lesser of:

(i) the amount distributed during the Fiscal Year to such Class C Partner with respect to its Class C Units pursuant to Section 7.1; and

(ii) the amount by which the losses for accounting purposes previously allocated to the Class C Partners exceeds the amount of income for accounting purposes previously allocated to the Class C Partners; and

(b) Second:

(i) if any Class B Units are issued and outstanding:

a. seventy-five percent (75%) to the Class A Partners at the end of such Fiscal Year in their respective Class A Pro-Rata Portion at the end of the Fiscal Year; and

b. twenty-five percent (25%) to the Class B Partners at the end of such Fiscal Year in their respective Class B Pro-Rata Portion at the end of the Fiscal Year; or

(ii) if no Class B Units are issued and outstanding, to the Class A Partners at the end of such Fiscal Year in their respective Class A Pro-Rata Portion at the end of the Fiscal Year.

**8.3 Allocation of Taxable Income or Loss.**

(1) The Taxable Loss of the Partnership for each Fiscal Year or for any stub period ending on the date of dissolution of the Partnership shall be allocated as follows:

(a) First, to the Class C Partners at the end of the Fiscal Year or stub period in an amount up to, but not exceeding, the Class C Net Capital at the end of the Fiscal Year or stub period in respect of the Class C Units held by the Class C Partner with such Taxable Loss allocated among the Class C Partners in proportion to each Class C Partner's Class C Net Capital at the end of the Fiscal Year or stub period and once Class C Partner's Class C Net Capital reaches zero as a consequence of the allocation of a Taxable Loss for the Fiscal Year or stub period, the remaining Taxable Loss shall be allocated among only those Class C Partners still having a positive balance of Class C Net Capital; and

(b) Second:

(i) if any Class B Units are issued and outstanding:

a. seventy-five percent (75%) to the Class A Partners at the end of such Fiscal Year or stub period in their respective Class A Pro-Rata Portion at the end of the Fiscal Year or stub period; and

b. twenty-five percent (25%) to the Class B Partners at the end of such Fiscal Year or stub period in their respective Class B Pro-Rata Portion at the end of the Fiscal Year or stub period; or

(ii) if no Class B Units are issued and outstanding, to the Class A Partners at the end of such Fiscal Year or stub period in their respective Class A Pro-Rata Portion at the end of the Fiscal Year or stub period.

(2) The Taxable Income of the Partnership for each Fiscal Year or for any stub period ending on the date of dissolution of the Partnership shall be allocated as follows:

(a) First, to each of the Class C Partners during the Fiscal Year or stub period in an amount up to, but not exceeding, the lesser of:

(i) the amount distributed during the Fiscal Year or stub period to such Class C Partner with respect to its Class C Units pursuant to Section 7.1; and

(ii) the amount by which the Taxable Losses previously allocated to the Class C Partner exceeds the amount of Taxable Income previously allocated to the Class C Partner; and

(b) Second:

(i) if any Class B Units are issued and outstanding:

a. seventy-five percent (75%) to the Class A Partners at the end of such Fiscal Year or stub period in their respective Class A Pro-Rata Portion at the end of the Fiscal Year or stub period; and

b. twenty-five percent (25%) to the Class B Partners at the end of such Fiscal Year or stub period in their respective Class B Pro-Rata Portion at the end of the Fiscal Year or stub period; or

(ii) if no Class B Units are issued and outstanding, to the Class A Partners at the end of such Fiscal Year or stub period in their respective Class A Pro-Rata Portion at the end of the Fiscal Year or stub period.

**8.4 Computation of Taxable Income or Loss.** The General Partner may, with the approval by Special Resolution of the Limited Partners, in computing the Taxable Income or Loss of the Partnership, adopt a different method of accounting than required by Section 8.1, adopt different treatments of particular items and make and revoke such elections on behalf of the Partnership and the Partners as the General Partner deems to be appropriate in order to reflect the terms of this Agreement.

**8.5 Capital Cost Allowance.** In connection with the determination of the Taxable Income or Loss of the Partnership for each Fiscal Year, unless otherwise agreed by Special Resolution of the Limited Partners, the General Partner shall deduct the maximum amount of capital cost allowance and other discretionary deductions as may be available to the Partnership for that period under applicable income tax Laws.

**8.6 Tax Returns.** Each Partner shall prepare and file such documents as may be required to be prepared and filed under the Income Tax Act and any similar provincial statute and shall include in its computation of income the income or loss of the Partnership for tax purposes as may be determined and allocated to it pursuant to this Article 8.

## Article 9
## PARTNERSHIP MEETINGS

**9.1 Quorum.** At any meeting of the Partnership a quorum shall consist of Partners representing more than 50% of the Class A Units and, if any Class B Units are issued and outstanding, more than 50% of the Class B Units in person (by authorized representative in the case of a Partner that is not an individual) or represented by proxy. If a quorum is not present at a meeting, such meeting shall be adjourned until a date no sooner than the fifth (5th) Business Day and no later than the tenth (10th) Business Day following the date of the initial meeting. Notices of a meeting shall be sent by the General Partner or by Partners representing more than 50% of the Class A Units or, if any Class B Units are issued and outstanding, more than 50% of the Class B Units at least 5 Business Days before the meeting, together with an agenda of the meeting.

**9.2 Powers Exercisable by Special Resolution.**

(1) The Partners who are entitled to vote may by Special Resolution, and not otherwise:

(a) dismiss the General Partner on written notice delivered not later than fourteen (14) days following the occurrence of any of the events described in Article 13, and admit a new General Partner concurrently therewith;

(b) admit a new General Partner to the Partnership, provided that there shall be only one General Partner of the Partnership at all times;

(c) waive any default on the part of the General Partner on such terms as they may determine and release the General Partner from any claims in respect thereof;

(d) continue the Partnership, if the Partnership is terminated by operation of law; and

(e) amend, modify, alter or repeal any Special Resolution.

## Article 10
## OPERATIONAL MATTERS

**10.1 Fiscal Year.** The financial year and fiscal year of the Partnership shall end on December 31 of each year.

**10.2 Right of Inspection.** Each Partner and its accountants and advisors shall, during the regular office hours of the Partnership, upon reasonable notice to the Partnership and in a manner that does not interfere with the Partnership's normal operation of its business, have access to the books and records of the Partnership, be entitled to make copies from such books and records, and be entitled to examine into the

state and progress of the Partnership business and the management of the Partnership business, at its sole cost and expense.

**10.3 Budget.** At least four (4) weeks before the beginning of each Fiscal Year, the General Partner shall send to each Partner a profit forecast, annual budget and business plan, providing, among other things, a detailed breakdown of projected cash flow, capital expenditures and income of the Partnership.

**10.4 Information**

(1) The General Partner will provide to each Partner on an ongoing basis information on the management of the Partnership including, without limitation:

(a) audited consolidated accounts for each financial year and quarterly management accounts and reports;

(b) the budget referred to in Section 10.3 for the forthcoming Fiscal Year;

(c) notice of any material events;

(d) copies of all material communications made pursuant to or in connection with the FuelCo/Project Co Fuel Supply Agreement; and

(e) all information required to file a tax return of a Partner under the Income Tax Act or a similar provincial statute within the time prescribed under the Laws, and in any case, within 60 days after the end of a Fiscal Year of the Partnership.

**10.5 Partner Loans and Guarantees.** Except as otherwise agreed by the Partners, a Partner shall not be required to loan any monies to the Partnership nor to guarantee any obligations of the Partnership.

**10.6 Additional Funds**

(1) If additional funds are required by the Partnership for its continued operation and for the carrying on of the Business, which funds are not required to pay a Fuel Supplier Liability, the General Partner shall be entitled to request by written notice provided to each Limited Partners that the Limited Partners either subscribe for Class C Units and/or advance to the Partnership by way of a loan in either case up to the total amount of the additional funds required and in the following proportion: (i) if any Class B Units are issued and outstanding, seventy-five percent (75%) of the total amount of the required additional funds will be requested from the Class A Partners, in their Class A Pro-Rata Portion, and twenty-five percent (25%) of the total amount of the required additional funds will be requested from the Class B Partners, in their Class B Pro-Rata Portion or (ii) if no Class B Units are issued and outstanding, the total amount of the required additional funds will be requested from the Class A Partners, in their Class A Pro-Rata Portion. The Limited Partners shall not have any obligation to subscribe for Class C Units or advance any amount to the Partnership as a loan pursuant to this Section 10.6(1). If any Limited Partner does not confirm its decision to subscribe for Class C Units or advance a loan to the Partnership in its applicable proportion within 10 Business Days of the General Partner's notice, the other Limited Partners may, at their option, subscribe for additional Class C Units or make an additional loan to the Partnership for the total amount not subscribed for or advanced to the Partnership by the other Limited Partners with each such Limited Partner entitled (but not obligated) to subscribe for or advance an additional minimum amount in the proportion of such additional amount equal to the amount the Limited Partner initially agreed to subscribe for or contribute relative to the amount all the Limited Partners initially agreed to subscribe for or contribute without taking into account such additional amount.

(2) Any loans advanced to the Partnership pursuant to Section 10.6(1) shall bear interest at an annual rate equal to the Prime Rate plus 5% per annum and shall be compounded on each anniversary date of the date on which such loan was made, provided that the interest rate shall not exceed the maximum allowable interest rate under applicable Law. Loans shall be repayable by the Partnership to the relevant Limited Partners in priority over any distribution on any issued and outstanding Units.

## Article 11
## ISSUANCE AND DISPOSITION OF PARTNERSHIP INTEREST

### 11.1 Pre-Emptive Rights for Issuance of Securities

(1) The Partnership will only issue Securities if additional capital is required by the Partnership for its continued operations to carry on the Business, including without limitation, if the Partnership requires funds to make a payment required from the Partnership under the FuelCo/Project Co Fuel Supply Agreement as provided in Section 11.3, and then only in accordance with this Section 11.1.

(2) If the Partnership desires to issue any Securities as permitted by this Section 11.1, then the Partnership shall first deliver to all Limited Partners holding Class A Units (the "**Class A Partners**") a written notice setting out a description of the Securities, the proposed price (which shall be equal to the Fair Market Value of the Securities or, in the case where the Securities are Class A Units, the greater of $1.00 per Class A Unit and the Fair Market Value per Class A Unit, and which price shall be payable in full in cash on the date of the issuance) and the proposed terms and conditions of the issuance and offering to each Class A Partner the right to subscribe for that number of Securities in the proportion that the number of the Class A Units owned by the Class A Partner is to the number of Class A Units owned by all of the Class A Partners (the "**Class A Pro-Rata Portion**"). Where the calculation of the Class A Pro-Rata Portion of Securities results in a fraction, then such Class A Partner's Class A Pro-Rata Portion will be increased or decreased to the nearest whole number. No Securities shall be issued to any Person other than an existing Limited Partner until such Person has agreed in writing to be bound by the provisions contained in this Agreement.

(3) Each Class A Partner shall notify the Partnership of the number of Securities for which it elects to subscribe, without any obligation to subscribe for any. If all of the Securities are not subscribed for, the Partnership shall notify each Class A Partner which has subscribed for its maximum number of Securities of the number of Securities remaining unsubscribed and such Class A Partner shall be entitled to purchase all or part of such unsubscribed Securities and shall notify the Partnership of the number of such unsubscribed Securities for which it elects to subscribe. If more than one Class A Partner elects to subscribe for any of the unsubscribed Securities, each Class A Partner will be entitled to subscribe for its Class A Pro-Rata Portion of the unsubscribed Securities but the Class A Pro-Rata Portion will be calculated as the proportion that the number of Class A Units owned by the Class A Partner is to the total number of Class A Units owned by all of the Class A Partners who elect to subscribe for any of the unsubscribed Securities. This process shall be repeated until all the Securities are subscribed for or all of the Class A Partners have decided not to subscribe for any more Securities. If any of the Securities are not subscribed for by Class A Partners, those Securities may be issued by the Partnership to any other Person provided such Person has agreed in writing to be bound by the provisions contained in this Agreement.

(4) Failure of a Class A Partner to reply to the notice of the Partnership given pursuant to Section 11.1(1) within 15 days of such notice or to any notice given pursuant to Section 11.1(3) within five (5) days of the notice shall be construed as a decision not to subscribe for the Securities referred to in the applicable notice under this Section 11.1.

(5) The issuance and sale of the Securities pursuant to this Section 11.1 shall be completed at the registered office of the Partnership within thirty (30) days after the Class A Partners have agreed to subscribe for all or part of the Securities to be issued and the price for the Securities shall be paid in accordance with the terms of the notice given pursuant to Section 11.1(1) on the completion date against delivery of a certificate or certificates representing the Securities registered in the name of each Class A Partner who subscribed for Securities hereunder.

**11.2 Pre-Emptive Rights for Issuance of Class B Units**

(1) The Partnership will only issue Class B Units to existing Class B Partners and then only as provided in Section 11.3 if the Partnership requires funds to pay a Fuel Supplier Liability, and then only in accordance with this Section 11.2.

(2) If the Partnership desires to issue any Class B Units as permitted by Section 11.2(1), then the Partnership shall first deliver to all Class B Partners a written notice setting out the number of Class B Units to be issued, the proposed price (which shall be equal to the greater of $1.00 per Class B Unit and the Fair Market Value per Class B Unit, and which price shall be payable in full in cash on the date of the issuance) and the proposed date of issuance and offering to each Class B Partner the right to subscribe for that number of Class B Units in the proportion that the number of the Class B Units owned by the Class B Partner is to the number of Class B Units owned by all of the Class B Partners (the "**Class B Pro-Rata Portion**"). Where the calculation of the Class B Pro-Rata Portion of Class B Units results in a fraction, then such Class B Partner's Class B Pro-Rata Portion will be increased or decreased to the nearest whole number. No Class B Units shall be issued to any Person other than an existing Class B Partner.

(3) Each Class B Partner shall notify the Partnership of the number of Class B Units for which it elects to subscribe, without any obligation to subscribe for any. If all of the Class B Units are not subscribed for, the Partnership shall notify each Class B Partner which has subscribed for its maximum number of Class B Units of the number of Class B Units remaining unsubscribed and such Class B Partner shall be entitled to purchase all or part of such unsubscribed Class B Units and shall notify the Partnership of the number of such unsubscribed Class B Units for which it elects to subscribe. If more than one Class B Partner elects to subscribe for any of the unsubscribed Class B Units, each Class B Partner will be entitled to subscribe for its Class B Pro-Rata Portion of the unsubscribed Class B Units but the Class B Pro-Rata Portion will be calculated as the proportion that the number of Class B Units owned by the Class B Partner is to the total number of Class B Units owned by all of the Class B Partners who elect to subscribe for any of the unsubscribed Class B Units. This process shall be repeated until all the Class B Units are subscribed for or all of the Class B Partners have decided not to subscribe for any more Class B Units. If any Class B Units are not subscribed for by Class B Partners, those Class B Units shall not be issued by the Partnership.

(4) Failure of a Class B Partner to reply to the notice of the Partnership given pursuant to Section 11.2(2) within 15 days of such notice or to any notice given pursuant to Section 11.2(2) within five (5) days of the notice shall be construed as a decision not to subscribe for the Class B Units referred to in the applicable notice under this Section 11.2.

(5) The issuance and sale of the Class B Units pursuant to this Section 11.2 shall be completed at the registered office of the Partnership within thirty (30) days after the Class B Partners have agreed to subscribe for all or part of the Class B Units to be issued and the price for the Class B shall be paid in accordance with the terms of the notice given pursuant to Section 11.2(2) on the completion date against delivery of a certificate or certificates representing the Class B Units registered in the name of each Class B Partner who subscribed for Class B Units hereunder.

(6) Upon and at any time after the end of the initial term of the Tolko Fuel Supply Agreement under section 2.1 of the Tolko Fuel Supply Agreement (regardless of whether or not the term is extended pursuant to section 2.2 of the Tolko Fuel Supply Agreement), to the extent not prohibited pursuant to applicable Laws the Partnership shall, upon request of Tolko LP, redeem and cancel any and all outstanding Units held by Tolko LP in consideration for the payment by the Partnership to Tolko LP of the amount of all Undistributed Amounts for those Units at that time. For purposes of Article 8 and determining the amount of all Undistributed Amounts for those Units in the Fiscal Year in which the redemption occurs, Tolko LP will be considered to own the redeemed Units at the end of the Fiscal Year in which the Units are redeemed and the Taxable Income or Taxable Loss allocated to Tolko LP in respect of such Units for the period of the Fiscal Year in which they were owned by Tolko LP prior to the redemption will be reduced to equal the amount otherwise allocable pursuant to Article 8 multiplied by the number of days in the Fiscal Year that Tolko LP was a Partner divided by the total number of days in the Fiscal Year. If Tolko or Tolko LP is in breach of any obligation to make a payment under any Tolko Fuel Supplier Liability Agreement or if Tolko is in breach of any obligation to indemnify and save harmless the Partnership under section 17.2(1) of the Tolko Fuel Supply Agreement, then, to the extent the Partnership does not already have any Blocked Distributions for the amount of the obligations, the Partnership shall be entitled to set-off the amount of the obligations that is payable by Tolko or Tolko LP against the amount payable by the Partnership to Tolko LP for the Units. The Units shall be redeemed and cancelled five (5) days after the date of the request by Tolko LP, and the amount payable by the Partnership to Tolko LP for the redemption of the Units will be payable by the Partnership to Tolko LP as and when distributions are made by the Partnership under Section 7.1 as follows:

(a) if any Class C Units are outstanding on the distribution date, a portion of the amounts then available for distribution on such distribution date equal to the proportion that the outstanding Undistributed Amounts represent relative to the sum of such outstanding Undistributed Amounts and the number of Class C Units outstanding, shall be used to pay that amount of the redemption price of the Units (and the remainder shall be distributed on the outstanding Units in accordance with Section 7.1); and

(b) if no Class C Units are outstanding on the distribution date, the amounts then available for distribution on such distribution date shall be used entirely to pay the redemption price of the Units until the outstanding redemption price has been paid in full.

From the date of the redemption of the Units held by Tolko LP until payment in full of such redemption price, the Parties shall not amend the terms and conditions of Article 7 in a manner that would negatively affect the timing of payment of any outstanding redemption price payable to Tolko LP for the redemption. In addition, notwithstanding any other provision in this Agreement, if any of the Units held by Tolko LP that are redeemed are Class C Units in respect of which any Tax Losses have been allocated to Tolko LP prior to the redemption of those Class C Units and the redemption price of the Class C Units is not paid in full on the date of the redemption, then Tolko LP will be allocated Taxable Income up to the amount of the Tax Losses previously allocated to it in respect of those Class C Units as Tolko LP receives payment of the redemption price for those Class C Units as permitted by section 96 of the *Income Tax Act* (Canada) even though Tolko LP is no longer a partner in the Partnership at the time the Taxable Income is earned.

(7) For as long as any Class B Units are issued and outstanding the Partnership will not redeem or otherwise purchase any issued and outstanding Units except as required by Section 5.2(4) or Section 11.2(6) unless an equal proportion of each class of issued and outstanding Units relative to the total number of issued and outstanding number of Units of such class are redeemed simultaneously.

**11.3 Funds Required for Payment of a Fuel Supplier Liability**

(1) If the General Partner, acting reasonably and in good faith, believes that the Partnership requires funds to pay a Fuel Supplier Liability that it is not able to fund from cash flow generated by its operations, the Partnership will offer:

(a) Class A Units to Class A Partners pursuant to Section 11.1 in the number of Class A Units required based on the greater of $1.00 per Class A Unit and the Fair Market Value of the Class A Units to raise seventy-five percent (75%) of the amount of the Fuel Supplier Liability that it is not able to fund from cash flow generated by its operations; and

(b) Class B Units to Class B Partners pursuant to Section 11.2 in the number of Class B Units required based on the greater of $1.00 per Class B Unit and the Fair Market Value of the Class B Units to raise twenty-five percent (25%) of the amount of the Fuel Supplier Liability that it is not able to fund from cash flow generated by its operations, provided that the Partnership shall not offer or issue any Class B Units at any time under this Section 11.3(1)(b) if the amount for which the Class B Units are offered or issued will exceed the Maximum Actual Tolko Liability at such time.

(2) Each:

(a) Class A Partner will, to the extent that the Class A Partner determines it has the funds available to do so, subscribe for Class A Units in an amount equal to its Class A Pro-Rata Portion of the Class A Units offered to the Class A Partners; and

(b) each Class B Partner will, to the extent that the Class B Partner determines it has the funds available to do so or, in the case of Tolko LP, to the extent that there are Blocked Distributions under Section 7.3, Escrowed Fuel Price Payments under section 7.7(1)(c) of the Tolko Fuel Supply Agreement or Escrowed Distributions under Section 7.7(1)(c), subscribe for Class B Units in an amount equal to its Class B Pro-Rata Portion of the Class B Units offered to the Class B Partners up to, in the case of Tolko LP, the Maximum Actual Tolko Liability at that time. If there is a combination of Escrowed Fuel Price Payments under section 7.7(1)(c) of the Tolko Fuel Supply Agreement, Blocked Distributions under Section 7.3 and Escrowed Distributions under Section 7.7(1)(c), the Escrowed Fuel Price Payments will be used to subscribe for Class B Units pursuant to section 7.7(3) of the Tolko Fuel Supply Agreement prior to the Blocked Distributions being used to subscribe for Class B Units pursuant to Section 7.7(3) and the Blocked Distributions will be used to subscribe for Class B Units pursuant to Section 7.3(a) prior to the Escrowed Distributions being used to subscribe for Class B Units pursuant to Section 7.7(3).

(3) If the funds received by the Partnership from:

(a) a Class A Partner for the Class A Units offered to the Class A Partner that are actually subscribed for by the Class A Partner are less than the Class A Partner's Class A Pro-Rata Portion of seventy-five percent (75%) of the amount required by the Partnership for the Fuel Supplier Liability, each Class B Partner may subscribe for Class C Units at $1.00 per Class C Unit in accordance with Section 11.4 for an

aggregate amount equal to the Class B Partner's Class B Pro-Rata Portion of the difference between (i) seventy-five percent (75%) of the amount required by the Partnership to pay the Fuel Supplier Liability, minus (ii) the aggregate amount paid by Class A Partners as the subscription price for Class A Units pursuant to Section 11.3(2)(a); or

(b) a Class B Partner for the Class B Units offered to the Class B Partner that are actually subscribed for by the Class B Partner are less than the Class B Partner's Class B Pro-Rata Portion of twenty-five percent (25%) of the amount required by the Partnership for the Fuel Supplier Liability (even if the reason is because twenty-five percent (25%) of the amount required by the Partnership for the Fuel Supplier Liability exceeds the Maximum Actual Tolko Liability) or if the Partnership is not entitled to issue Class B Units to the Class B Partners pursuant to Section 11.3(1)(b) because the amount for which the Class B Units would be offered or issued would exceed the Maximum Actual Tolko Liability at such time, each Class A Partner may subscribe for Class C Units at $1.00 per Class C Unit in accordance with Section 11.4 for an aggregate amount equal to the Class A Partner's Class A Pro-Rata Portion of the difference between (i) twenty-five percent (25%) of the amount required by the Partnership to pay the Fuel Supplier Liability, minus (ii) the aggregate amount paid by Class B Partners as the subscription price for Class B Units pursuant to Section 11.3(3)(b), if any.

(4) If at any time and from time to time after Units have been issued pursuant to this Section 11.3 at a time when twenty-five percent (25%) of the amount required by the Partnership for the Fuel Supplier Liability exceeds the Maximum Actual Tolko Liability and as a result there is any Outstanding Potential Tolko Portion of a Fuel Supplier Liability and there is a subsequent Increase in Tolko's Actual Liability, the Partnership will, unless Dalkia International S.A. or NV HoldCo LP determines, acting reasonably, that there is then a Fuel Supplier Credit Risk, offer additional Class B Units to the Class B Partners as provided in Section 11.3(1)(b), each Class B Partner will be entitled to subscribe for the Class B Units as provided in Section 11.3(2)(b) and the funds received by the Partnership from a Class B Partner for the Class B Units offered to the Class B Partner that are actually subscribed for by the Class B Partner (whether using Escrowed Fuel Price Payments, Blocked Distributions, Escrowed Distributions, paid pursuant to a Tolko Fuel Supplier Liability Agreement or otherwise) will be distributed in accordance with Section 7.1.

(5) If any Units have been issued pursuant to Section 11.3 (including Class C Units as provided in Section 11.3(3)) to pay a Fuel Supplier Liability that was only a potential obligation or liability and such potential obligation or liability does not materialize within the time that the General Partner, acting reasonably and in good faith, believed that it would, the subscription price paid in respect thereto that is not needed for an actual Fuel Supplier Liability shall be returned by the Partnership to the Partner from whom it was received in accordance with the following:

(a) first, if any amount of such subscription price was paid for any Class C Units, such amount will be returned to the Partner that paid such amount; and

(b) second, once any amount of such subscription price that was paid for any Class C Units has been returned to the Partners that paid such amounts, any amount of such subscription price paid for any other Units will be returned to the Partner that paid such amount.

If the funds were taken from: (i) Blocked Distributions pursuant to Section 7.3(a), the amount shall be credited back to and retained by the Partnership as Blocked Distributions under Section 7.3, (ii) Escrowed Fuel Price Payments pursuant to section 7.7(3) of the Tolko Fuel Supply Agreement, the amount shall be returned back to the Escrow Agent and held as Escrowed Fuel Price Payments pursuant to section 7.7(3) of the Tolko Fuel Supply Agreement, or (iii) Escrowed Distributions pursuant to Section 7.7(3), the amount shall be returned back to the Escrow Agent and held as Escrowed Distributions under the Escrow Agreement, in any such case within 15 days from the end of the time period that the General Partner, acting reasonably and in good faith, believed such potential obligation or liability would materialize.

**11.4 Class C Units**

(1) The Partnership will only issue Class C Units as provided in Section 10.6(1) or Section 11.3(3).

(2) If the Partnership desires to issue any Class C Units as permitted by Section 11.4(1), then the Partnership shall first deliver to all Class A Partners and Class B Partners a written notice setting out the number of Class C Units to be issued, the proposed price (which shall be equal to the amount of $1 per Class C Unit and which shall be payable in full in cash on the date of the issuance) and the proposed date of issuance and offering to each:

(a) Class A Partner the right to subscribe for its Class A Pro-Rata Portion of:

(i) in the case of Section 10.6(1), seventy-five percent (75%) of the Class C Units; and

(ii) in the case of Section 11.3(3), the Class C Units referred to in Section 11.3(3)(b), if applicable;

(b) Class B Partner the right to subscribe for its Class B Pro-Rata Portion of:

(i) in the case of Section 10.6(1), twenty-five percent (25%) of the Class C Units; and

(ii) in the case of Section 11.3(3), the Class C Units referred to in Section 11.3(3)(a), if applicable.

Where the calculation of the Class A Pro-Rata Portion or Class B Pro-Rata Portion of Class C Units results in a fraction, then such Limited Partner's Class A Pro-Rata Portion or Class B Pro-Rata Portion, as the case may be, will be increased or decreased to the nearest whole number. No Class C Units shall be issued to any Person other than an existing Class A Partner or Class B Partner.

(3) Each Class A Partner and Class B Partner to whom an offer is made under Section 11.4(2) shall notify the Partnership of the number of Class C Units for which it elects to subscribe, without any obligation to subscribe for any. If all of the Class C Units are not subscribed for, the Partnership shall notify each Limited Partner which has subscribed for its maximum number of Class C Units of the number of Class C Units remaining unsubscribed and such Limited Partner shall be entitled to purchase all or part of such unsubscribed Class C Units and shall notify the Partnership of the number of such unsubscribed Class C Units for which it elects to subscribe. If more than one Limited Partner elects to subscribe for any of the unsubscribed Class C Units, each such Limited Partner that is a:

(a) Class A Partner will be entitled to subscribe for its Class A Pro-Rata Portion of:

(i) in the case of Section 10.6(1):

a. seventy-five percent (75%) of the unsubscribed Class C Units if any Limited Partner that elects to subscribe for any of the unsubscribed Class C Units is a Class B Partner; or

b. the unsubscribed Class C Units if none of the Limited Partners that elects to subscribe for any of the unsubscribed Class C Units is a Class B Partner;

(ii) in the case of Section 11.3(3), the unsubscribed Class C Units referred to in Section 11.3(3)(b), if applicable;

but the Class A Pro-Rata Portion will be calculated as the proportion that the number of Class A Units owned by the Class A Partner is to the total number of Class A Units owned by all of the Class A Partners who elect to subscribe for any of the unsubscribed Class C Units; or

(b) Class B Partner will be entitled to subscribe for its Class B Pro-Rata Portion of:

(i) in the case of Section 10.6(1):

a. twenty-five percent (25%) of the unsubscribed Class C Units if any Limited Partner that elects to subscribe for any of the unsubscribed Class C Units is a Class A Partner; or

b. the unsubscribed Class C Units if none of the Limited Partners that elects to subscribe for any of the unsubscribed Class C Units is a Class A Partner;

(ii) in the case of Section 11.3(3), the unsubscribed Class C Units referred to in Section 11.3(3)(a), if applicable;

but the Class B Pro-Rata Portion will be calculated as the proportion that the number of Class B Units owned by the Class B Partner is to the total number of Class B Units owned by all of the Class B Partners who elect to subscribe for any of the unsubscribed Class C Units.

This process shall be repeated until all the Class C Units are subscribed for or all of the Class A Partners and Class B Partners to whom an offer is made under Section 11.4(2) have decided not to subscribe for any more Class C Units. If any Class C Units are not subscribed for by Class A Partners or Class B Partners to whom an offer is made under Section 11.4(2), those Class C Units shall not be issued by the Partnership.

(4) Failure of a Limited Partner to reply to the notice of the Partnership given pursuant to Section 11.4(2) within 15 days of such notice or to any notice given pursuant to Section 11.4(3) within five (5) days of the notice shall be construed as a decision not to subscribe for the Class C Units referred to in the applicable notice under this Section 11.4.

(5) The issuance and sale of the Class C Units pursuant to this Section 11.4 shall be completed at the registered office of the Partnership within thirty (30) days after the process under Section 11.4(2) and Section 11.4(3) has been completed and the Class A Partners and Class B Partners have agreed to subscribe for all or part of the Class C Units to be issued and the price for the Class C shall be paid in accordance

with the terms of the notice given pursuant to Section 11.4(2) on the completion date against delivery of a certificate or certificates representing the Class C Units registered in the name of each Limited Partner who subscribed for Class C Units hereunder.

**11.5 Restriction on Transfers.** Except as otherwise permitted pursuant to the provisions of Section 11.6, Section 11.7, Section 11.8 or Section 11.9 or, in the case of the General Partner only, Section 13.1or Section 13.5, no Party shall Transfer, directly or indirectly, its Partnership Interest, or any part thereof, or any right, title or interest therein. A Transfer of any Partnership Interest in violation of this Agreement shall not be valid and the General Partner shall not register, nor permit any transfer agent to register, any such Transfer on the securities register of the Partnership.

**11.6 Lock-In Period.** Except in the case of a Transfer pursuant to this Section 11.6, a Transfer to a Permitted Transferee in accordance with Section 11.7, or a Transfer pursuant to Section 11.8, during the term of the FuelCo/Project Co Fuel Supply Agreement, Tolko LP (and its Permitted Transferees) shall not Transfer, directly or indirectly, all or any portion of its Partnership Interest if such Transfer would result in Tolko LP and its Permitted Transferees holding, directly or indirectly, less than 25% of the total aggregate number of issued and outstanding Class A Units and Class B Units. Except in the case of a Transfer pursuant to this Section 11.6, a Transfer to a Permitted Transferee in accordance with Section 11.7 or a Transfer pursuant to Section 11.8, during the term of the FuelCo/Project Co Fuel Supply Agreement and if any Class B Units are issued and outstanding, NV Holdco LP (and its Permitted Transferees) shall not Transfer, directly or indirectly, all or any portion of its Partnership Interest if such Transfer would result in NV Holdco LP and its Permitted Transferees holding, directly or indirectly, fifty-percent (50%) or less of the total aggregate issued and outstanding Class A Units and Class B Units. Notwithstanding the foregoing, subject to Section 11.10 and Section 11.11 if any Class B Units are issued and outstanding:

(a) Tolko LP shall be entitled to Transfer a portion of its Units to an Other Fuel Supplier Subcontractor with the prior written consent of NV HoldCo LP, such consent not to be unreasonably withheld or delayed; and

(b) NV HoldCo LP shall be entitled to Transfer a portion of its Units to an Other Fuel Supplier Subcontractor with the prior written consent of Tolko LP (provided NV HoldCo LP and its Permitted Transferee continue to own more than fifty percent (50%) of the total aggregate issued and outstanding Class A Units and Class B Units), such consent not to be unreasonably withheld or delayed.

**11.7 Permitted Transferees.** A Limited Partner (a "**Transferor**") shall be entitled, upon prior written notice to the other Partners, to Transfer all or a part of its Partnership Interest, to any Permitted Transferee of such Transferor, provided that:

(a) the Permitted Transferee has executed prior to such Transfer a counterpart to this Agreement and agreed to be bound by or is otherwise added as a party to the Escrow Agreement or enters into a new Escrow Agreement regarding the Escrowed Distributions to be paid to and held by the Escrow Agent from and after the assignment of the Transferor's Partnership Interest, upon which the Permitted Transferee shall have all of the rights and obligations of the Transferor hereunder and thereunder with respect to such Partnership Interest; and

(b) the Permitted Transferee and the Transferor have agreed, in form and terms satisfactory to the other Partners, acting reasonably, that as long as the Permitted Transferee holds such Partnership Interest, the Permitted Transferee shall remain a wholly-owned Affiliate of the Transferor, except where the Permitted Transferee

is subsequently wound-up or dissolved into the Transferor (and in such a case the Transfer of the Partnership Interest by the Permitted Transferee back to the Transferor as a result of the winding-up or dissolution of the Permitted Transferee will also be permitted without consent).

**11.8 Bankruptcy or Material Breach**

(1) In the event that any of the following events (an "**Event of Change**") should occur:

(a) a Limited Partner commits an act of bankruptcy, becomes insolvent, goes into liquidation (other than as a result of an internal reorganization or voluntary winding up or dissolution), makes a general assignment for the benefit of its creditors or otherwise acknowledges its insolvency, or a bankruptcy petition is filed or presented against a Limited Partner and is not contested in good faith and discharged within thirty days after it is filed or presented, or a receiver or similar officer is appointed for a Limited Partner or for any substantial part of its property;

(b) in respect of NV HoldCo LP only, the failure by Dalkia International S.A. and NV HoldCo LP to pay any amount payable by Dalkia International S.A. and NV HoldCo LP when due under the Dalkia Fuel Supply Guarantee unless such failure is cured within 10 days of the giving of a written notice by a non-defaulting Limited Partner requiring such rectification;

(c) in respect of Tolko LP only, the failure by Tolko to pay any amount payable by Tolko when due under any Tolko Fuel Supplier Liability Agreement unless such failure is cured within 10 days of the giving of a written notice by a non-defaulting Limited Partner requiring such rectification;

(d) in respect of Tolko LP only, the occurrence of an "Event of Default" (pursuant to the meaning ascribed to such term in the Tolko Fuel Supply Agreement) by Tolko under the Tolko Fuel Supply Agreement;

(e) a change of Control of a Limited Partner, unless approved by the other Partners; or

(f) a Limited Partner permits to be done or omits to do any act in material breach of this Agreement and fails to rectify the same within thirty (30) days after the giving of a written notice by a non-defaulting Limited Partner requiring such rectification;

then the Limited Partner subject to the Event of Change and its Affiliates (the "**Defaulting Partner**"):

(g) shall be deemed to have offered to sell all of their Class A Units and Class B Units (the "**Default Class A and B Units**") to each other Limited Partner (the "**Non-Defaulting Partner(s)**") in the proportion that the number of Class A Units and Class B Units owned by each Non-Defaulting Partner is to the number of Class A Units and Class B Units owned by all Non-Defaulting Partners (the "**Proportionate Share**"); and

(h) shall be deemed to have offered to sell all of their Class C Units (the "**Default Class C Units**") to the Non-Defaulting Partners, in their Proportionate Share.

(2) If any Partner becomes aware of an Event of Change that occurs for any other Partner, it will notify the other Partners. Within one hundred twenty (120) days after the Non-Defaulting Partner(s) becomes aware of the Event of Change (the "**Default Period**"), a notice accepting its Proportionate Share of the Default Class A and B Units and/or Default Class C Units may be given by Non-Defaulting Partner(s) to the Defaulting Partner and the other Non-Defaulting Partners. If a Non-Defaulting Partner has not accepted all of its Proportionate Share of the Default Class A and B Units and/or Default Class C Units, the other Non-Defaulting Partner(s) shall be entitled to purchase all Default Class A and B Units and/or Default Class C Units that have not been accepted by giving notice to that effect to the Defaulting Partner within 10 days from the expiry of the 120 day-period referred to above. If more than one Non-Defaulting Partner gives such a notice, each Non-Defaulting Partner will be entitled to purchase the Proportionate Share of the Default Class A and B Units and/or Default Class C Units but the Proportionate Share will be calculated as the proportion that the number of Class A Units and Class B Units owned by the Non-Defaulting Partner is to the total number of Class A Units and Class B Units owned by all of the Non-Defaulting Partners who give such a notice. This process shall be repeated until all the Default Class A and B Units and Default Class C Units are being purchased or all of the Non-Defaulting Partners have decided not to purchase any more Default Class A and B Units or Default Class C Units. On the day which is the later of:

(a) thirty (30) days after the delivery of the last notice of acceptance delivered in accordance with the above; and

(b) five (5) days following the determination of the purchase price of the Default Class A and B Units and Default Class C Units in accordance with Section 11.8(3),

if a Non-Defaulting Partner(s) has given a notice of acceptance to the Defaulting Partner for all of the Default Class A and B Units and/or Default Class C Units within the Default Period, the Defaulting Partner shall sell all of the Default Class A and B Units and/or Default Class C Units to the applicable Non-Defaulting Partner(s) and the Non-Defaulting Partner(s) shall purchase all of the Default Class A and B Units and/or Default Class C Units at the price determined pursuant to provisions of Section 11.8(3) and upon the other terms and conditions set out in Article 12. In any other case, the deemed offer by the Defaulting Partner to sell the Default Class A and B Units and/or Default Class C Units shall be null and void upon expiration of the Default Period. For greater certainty Non-Defaulting Partner(s) may choose to purchase all of the Default Class A and B Units and none of the Default Class C Units or all of the Default Class C Units and none of the Default Class A and B Units.

(3) The purchase price of any Default Class A and B Units and Default Class C Units, as applicable, being purchased and sold pursuant to the provisions of this Section 11.8 shall be their Fair Market Value as determined by a valuator experienced in the valuation of energy projects, independent from the Parties, appointed jointly by the Limited Partners within 30 days from the first date any notice of acceptance is delivered pursuant to Section 11.8(2), as at the date of the Event of Change. If the Limited Partners cannot agree on the appointment of the valuator, the Defaulting Partner shall appoint its independent experienced valuator and the Non-Defaulting Partner(s) shall also appoint an independent experienced valuator, in which case the Fair Market Value shall be equal to the average between the Fair Market Value determined by each valuator. The valuators shall determine such Fair Market Value as experts and not as umpires or arbitrators. The valuators may seek such information from the Parties as may, in the opinion of the valuators, be reasonably required to effectively determine such Fair Market Value.

**11.9 Right of First Refusal**

(1) If any Limited Partner (the "**Offeror**") desires to sell all or any portion of its Units (the "**Offered Units**") to an Arm's Length third party, the Offeror shall first give a notice (the "**Notice of Sale**") to the other Limited Partners (the "**Offeree(s)**"):

(a) setting out the identity of the Arm's Length third party;

(b) setting out the proposed price and the proposed terms and conditions of the sale;

(c) attaching a copy of any offer received by the Offeror in respect thereof, and

(d) attaching an affidavit of the Offeror or its authorized officer, to the effect that the Offer is a bona fide offer which the Offeror wishes to accept,

whereupon the Offeror shall be deemed to have offered to sell the Offered Units to the Offerees in their respective Proportionate Shares at the price and on the terms and conditions contained in the Notice of Sale.

(2) Within thirty (30) days after an Offeree's receipt of the Notice of Sale (hereinafter in this Section 11.9 the "**Acceptance Period**") the Offeree may give a notice (the "**Acceptance**") to the Offeror and any other Offerees, accepting its Proportionate Share of the Offered Units, and:

(a) if there is more than one Offeree and an Offeree has not accepted to purchase all of its Proportionate Share of the Offered Units, each of the other Offerees shall be entitled to purchase all of its Proportionate Share of the Offered Units that have not been accepted by giving notice to that effect to the Offeror within 10 days from the expiry of the Acceptance Period but the Proportionate Share will be calculated as the proportion that the number of Class A Units and Class B Units owned by the Offeree is to the total aggregate number of Class A Units and Class B Units owned by all of such other Offerees who give such a notice, and this process shall be repeated until all of the Offered Units are being purchased or all of the Offerees have decided not to purchase any more of the Offered Units;

(b) if the Offerees give Acceptances to the Offeror within the Acceptance Period (or the applicable additional 10-day period referred to in the preceding paragraph) for all Offered Units, the Offeror shall sell the Offered Units to the Offerees who give Acceptances and the Offerees who give Acceptances shall purchase the Offered Units thirty (30) days after the giving of all of the Acceptances at the price and on the terms and conditions set out in the Notice of Sale; and

(c) in any other case, within ninety (90) days after the expiration of the Acceptance Period (and additional 10 day periods where applicable), the Offeror may sell the Offered Units to any Person at a price and on terms and conditions no less favourable to the Offeror than the price and terms and conditions set out in the Notice of Sale.

(3) For greater certainty:

(a) failure of an Offeree to reply to the Notice of Sale within the Acceptance Period (or any additional 10-day period, where applicable) shall be construed as a decision not to accept the offer to sell the Offered Units under this Section; and

(b) if the consideration to be received by the Offeror from the Arm's Length third party is one which cannot be matched in kind by an Offeree, the Offeror must set out in the Notice of Sale its bona fide estimate of the value in cash of the consideration that cannot be matched in kind by the Offeree. If the Notice of Sale does not include an estimate as aforesaid, the Offeree may request such estimate, in which event the Acceptance Period shall be suspended until such estimate is received by the Offeree. In case of dispute as to the reasonableness of the estimate, the matter shall be suspended until a final settlement or a final and non-appealable decision in that respect.

**11.10 Parties to Facilitate Transfers.** Each of the Parties agrees to give and execute all necessary consents and approvals to a Transfer of a Partnership Interest which is permitted under this Agreement promptly after the relevant provisions of this Agreement relating to such Transfer have been complied with.

**11.11 Transferee to be Bound.** Notwithstanding anything to the contrary in this Agreement, no Limited Partner shall Transfer any of its Units to any Person other than an existing Limited Partner until such Person has agreed in writing to be bound by the provisions contained in this Agreement that were applicable to the Transferor on the date of the Transfer.

## Article 12
## SALE

**12.1 Title.** Each of the Partners warrants one with the other that it shall have good and marketable title to the Partnership Interest which it may from time to time sell to any other Partner and that the Partner purchasing such Partnership Interest will acquire such Partnership Interest free of encumbrances of any kind and the Partner selling the Partnership Interest will indemnify the Partner that is purchasing the Partnership Interest against any loss which it may suffer as a result of there being any encumbrance upon or any defect in title to such Partnership Interest.

**12.2 Date and Time of Closing.** Any sale and purchase of a Partnership Interest between any of the Partners provided for in Article 11 shall be closed at the offices of the solicitors of the Partnership at 10:00 o'clock in the forenoon on the day provided for in the relevant Section hereof or on such other day as may be agreed upon by the relevant Partners, the actual day and time when the said sale and purchase are to be closed being herein referred to as the "**Date of Closing**" or the "**Time of Closing**" respectively.

**12.3 Payment of Purchase Price.** At the Time of Closing, the Partner selling its Partnership Interest shall deliver certificates representing its Securities, Class B Units or Class C Units duly endorsed in blank for transfer and the Partner purchasing such Partnership Interest shall deliver a certified cheque, bank draft or wire transfer for the purchase price of the Partnership Interest being purchased by such Partner.

**12.4 Partner Indebtedness to the Partnership.** If, at the Date of Closing, the Partner selling its Partnership Interest is indebted to the Partnership in an amount recorded on the books of the Partnership and verified by the accountants or auditors of the Partnership, the Partner purchasing its Partnership Interest shall pay the purchase price of the Partnership Interest to the Partnership, and the Partnership shall deduct such debt therefrom and shall forthwith pay the balance, if any, to the Partner selling its Partnership Interest.

**12.5 Partnership Indebtedness to Partner.**

(1) If, at the Date of Closing, the Partnership is indebted to the Partner selling its Partnership Interest in an amount recorded on the books of the Partnership and verified by the accountants or auditors of the Partnership, then, at the option of the Partner purchasing the Partnership Interest:

(a) the Partnership shall pay such debt to the Partner selling its Partnership Interest by certified cheque at the Time of Closing; or

(b) the Partner purchasing the Partnership Interest shall reimburse and repay the Partner selling its Partnership Interest for the full amount of the indebtedness of the Partnership to the Partner selling its Partnership Interest and the Partner purchasing the Partnership Interest shall thereby acquire the indebtedness of the Partnership owed to the Partner selling the Partnership Interest.

**12.6 Set-Off.** Amounts owing to the Partnership by a selling Partner or one of its Affiliates pursuant to Section 12.4 hereof may be set-off against amounts owing by the Partnership to such Partner pursuant to Section 12.5 hereof, and vice versa.

**12.7 Partner Guarantees.** If, at the Date of Closing, the Partner selling its Partnership Interest has (or one of its Affiliates has) any personal guarantees, securities or covenants pledged with any Person to secure an indebtedness, liability or obligation of the Partnership, then the Partnership and the Partner purchasing its Partnership Interest shall use all reasonable efforts to deliver up or cause to be delivered up to the Partner selling its Partnership Interest and cancel or cause to be cancelled such guarantees, securities and/or covenants at or before the Time of Closing. If such is not possible after the purchasing Partner shall have used its reasonable efforts to procure such cancellation, the purchasing Partner shall, at the Time of Closing and in form reasonably satisfactory to counsel for the Partner selling its Partnership Interest, indemnify and save harmless the Partner selling its Partnership Interest and its Affiliates from and against all claims arising out of any such guarantees, securities and/or covenants whenever such claims arise, and provide to the selling Partner and its Affiliates such security in respect thereof as may be reasonably required by the selling Partner.

## Article 13
## APPOINTMENT, CHANGE, RESIGNATION OR REMOVAL OF GENERAL PARTNER

**13.1 Assignment or Transfer of Partnership Interest of General Partner.** The General Partner shall not sell, assign or otherwise dispose of its interest as the general partner in the Partnership except with the approval by a Special Resolution of the Limited Partners, provided, however, that the General Partner may resign as general partner of the Partnership provided that the General Partner has complied with Section 13.2 hereof.

**13.2 Resignation.**

(1) The General Partner may resign on written notice to the Limited Partners, and such resignation will become effective upon the earlier of:

(a) one hundred twenty (120) days after written notice thereof is given as aforesaid; and

(b) the admission of a new general partner to the Partnership by Special Resolution.

(2) The General Partner's will not be effective if the effect thereof would be to dissolve the Partnership.

**13.3 Replacement.**

(1) Except as provided for in this Section 13.3, the General Partner may not be removed as general partner of the Partnership.

(2) Upon the passing of any resolution of the directors or shareholders of the General Partner requiring or relating to the bankruptcy, dissolution, liquidation or winding-up or the making of any assignment for the benefit of creditors of the General Partner, or upon the appointment of a receiver of the assets and undertaking of the General Partner, or upon the General Partner failing to maintain its corporate status, the General Partner shall cease to be qualified to act as general partner hereunder and shall cease to be the general partner of the Partnership effective upon the appointment of a new general partner. The insolvency or bankruptcy of the General Partner shall not cause the Partnership to be dissolved or terminated and such insolvency or bankruptcy shall not be a ground for applying to any court of competent jurisdiction to have the Partnership wound up or dissolved or its interest in the Partnership property partitioned. A new general partner of the Partnership shall, in such instances, be appointed by Special Resolution.

**13.4 Bankruptcy or Dissolution.** The General Partner will cease to be the general partner of the Partnership in the event of the bankruptcy or insolvency of the General Partner (or the commencement of any act or proceeding in connection therewith which is not contested in good faith by the General Partner) or the appointment of a trustee, receiver or receiver-manager of the affairs of the General Partner, effective upon the admission of a new general partner of the Partnership by Special Resolution.

**13.5 Transfer of Management.**

(1) On the admission of a new general partner to the Partnership on the resignation of the General Partner or the General Partner otherwise ceasing to be the general partner of the Partnership, the outgoing general partner shall do all things and shall take all steps to immediately and effectively transfer the administration, management and operation, assets, books, records and accounts of the Partnership to the new general partner, including the execution of all registrations, bills of sale, certificates, declarations and other documents whatsoever which may be necessary to effect such change and to convey all the assets of the Partnership held by the General Partner to the new general partner of the Partnership. All costs of such transfer shall be for the account of the Partnership.

(2) On the resignation of the General Partner or the General Partner otherwise ceasing to be the general partner of the Partnership and the admission of a new general partner, (i) the outgoing general partner will, at the cost of the Partnership, to the extent required, transfer title to the Partnership property to such new general partner and will execute all deeds, certificates, declarations and other documents necessary or desirable to effect such transfer in a timely fashion, and (ii) assign to the new general partner all Units owned by the outgoing general partner, for the Fair Market Value thereof as determined by the auditors of the Partnership.

**13.6 Release.** Upon the resignation of the General Partner or the General Partner otherwise ceasing to be the general partner of the Partnership, the Partnership and the Limited Partners shall release and hold harmless the General Partner from all Losses suffered or incurred by the General Partner as a result of or arising out of events which occur in relation to the Partnership after the effective time of such resignation of the General Partner or the General Partner otherwise ceasing to be the general partner of the Partnership.

**13.7 New General Partner.** A new general partner of the Partnership will become a Party to this Agreement by signing a counterpart hereof and will agree to be bound by all of the provisions hereof and

to assume the obligations, duties and liabilities of the General Partner hereunder as and from the date the new general partner becomes a Party to this Agreement.

## Article 14
## POWER OF ATTORNEY

### 14.1 Appointment

(1) Each Limited Partner hereby irrevocably makes, constitutes and appoints the General Partner, and any successor to the General Partner under the terms of this Agreement, as its true and lawful attorney and agent, with full power and authority in its name, place and stead to:

(a) execute, deliver, file and/or record in the appropriate public office:

(i) the Declaration and all amendments to the Declaration that may be required; and;

(ii) the declaration required under the British Columbia *Partnership Act* for the Partnership to be registered under that Act and all amendments to that declaration.

(2) The power of attorney granted herein, being coupled with an interest, is irrevocable and shall survive the assignment, to the extent of the obligations of a Limited Partner hereunder, by the Limited Partner of the whole or any part of the Partnership Interest of the Limited Partner in the Partnership and shall be binding upon the successors and assigns of the Limited Partner, and may be exercised by the General Partner on behalf of each Limited Partner in executing any instrument thereon and by listing all the Limited Partners executing such instrument with a single signature as attorney and agent for all of them.

## Article 15
## NOTICES

**15.1 Method of Giving Notice.** All notices pertaining to this Agreement not explicitly permitted to be in a form other than writing will be in writing and will be addressed to the other Party as follows:

If to the Partnership:

Merritt FuelCo Limited Partnership
c/o Dalkia Canada Inc.
Park Place
666 Burrard Street, Suite 500
Vancouver, BC V6C 3P6 Canada
Attention: Fadi Oubari
Facsimile number: (604) 688-2419

with a copy to:

c/o Fengate Capital Management Ltd.
5000 Yonge Street, Suite 1805
Toronto, Ontario M2N 7E9
Attention: Vice-President
Facsimile number: (416) 488-3359

If to the General Partner:

Nicola Valley FuelCo Inc.
c/ o Dalkia Canada Inc.
The Exchange Tower, P.O. Box 427
130 King Street West, Suite 1800
Toronto, Ontario, M5X1E3
Facsimile: (416) 947-0167
E-mail: xpietri@dalkia.ca

with a copy to:

c/o Fengate Capital Management Ltd.
5000 Yonge Street, Suite 1805
Toronto, Ontario M2N 7E9
Attention: Vice-President
Facsimile number: (416) 488-3359

If to NV HoldCo LP:

Nicola Valley Fuel HoldCo Limited Partnership
c/o Dalkia Canada Inc.
Park Place
666 Burrard Street, Suite 500
Vancouver, BC V6C 3P6 Canada
Attention: Fadi Oubari
Facsimile number: (604) 688-2419

with a copy to:

c/o Fengate Capital Management Ltd.
5000 Yonge Street, Suite 1805
Toronto, Ontario M2N 7E9
Attention: Vice-President
Facsimile number: (416) 488-3359

If to Tolko LP:

Tolko Industries Ltd.

P.O. Box 39
3000 – 28 Street
Vernon, BC V1T 6M1
Attention: Fibre Manager
Facsimile number: (250) 549-5335

**15.2 Method of Giving Notice**

(1) Notices will be delivered or transmitted as set out below, and will be considered to have been received by the other Party:

(a) on the date of delivery if delivered by hand or by courier prior to 5:00 p.m. (local time of the recipient) on a Business Day and otherwise on the next following Business Day (it being agreed that the burden of establishing delivery will be on the Party delivering the notice);

(b) in those circumstances where electronic transmission (other than transmission by facsimile) is expressly permitted under this Agreement, on the date of delivery if delivered prior to 5:00 p.m. (local time of the recipient) on a Business Day and otherwise on the next following Business Day, provided that a copy of such notice is also delivered by regular post within a reasonable time thereafter;

(c) on the Business Day following the date of transmission by facsimile, if transmitted prior to 5:00 p.m. (local time of the recipient) on a Business Day and otherwise on the next following Business Day, provided that a copy of such notice is also delivered by regular post within a reasonable time thereafter; and

(d) on the fifth (5th) Business Day following the date of mailing by registered post.

(2) Notwithstanding Subsection 15.2(1), if regular post service, facsimile or other form of electronic communication is interrupted by strike, slowdown, a force majeure event or other cause, a notice, direction or other instrument sent by the impaired means of communication will not be deemed to be received until actually received, and the Party sending the notice will utilize any other such service which has not been so interrupted to deliver such notice.

## Article 16
## AMENDMENT

**16.1 Amendment with Approval of Limited Partners and General Partner.** Unless otherwise provided, this Agreement may only be amended by written approval of all the Partners; but an amendment to this Agreement which will in any manner allow any Limited Partner to take part in the management of the Business will be void.

## Article 17
## DISSOLUTION AND TERMINATION OF THE PARTNERSHIP

**17.1 Events of Dissolution**

(1) The Partnership will be dissolved on the earlier of the occurrence of the following events:

(a) the passage of a resolution of the General Partner approving the dissolution and winding-up of the Partnership which shall provide for the terms and manner in and upon which the Partnership property shall be disposed of and the approval of such dissolution by a Special Resolution of the Limited Partners; or

(b) sale, transfer or other disposition of all of the assets of the Partnership,

but, notwithstanding anything herein to the contrary, no dissolution of the Partnership shall occur until a notice of the dissolution is registered and published as prescribed under *The Business Names Registration Act* (Manitoba).

## Article 18
## CONFIDENTIALITY

**18.1 Confidentiality**

(1) No Partner shall, while it directly or indirectly holds any Units and at all times after it ceases to be a Partner, directly or indirectly, disclose any Confidential Information to any Person, except:

(a) to its Affiliates;

(b) to the professional advisors of such Partner or its Affiliates and who either are bound by the duties of their engagement to maintain the confidentiality of the Confidential Information or enter into a confidentiality agreement in a form reasonably acceptable to the Partnership;

(c) as authorized by the Partnership; or

(d) as required by Law (if the Partner has immediately notified the Partnership of that requirement of Law, unless precluded by Law from doing so).

(2) Each Partner shall use at least the same degree of care in maintaining the confidentiality of the Confidential Information as it uses in maintaining the confidentiality of its own confidential or proprietary information, but in no event with less care than is reasonable given the nature of the information.

(3) No Partner shall use or copy any Confidential Information, except:

(a) to advance the business of the Partnership;

(b) to exercise its rights or to comply with its obligations under this Agreement;

(c) as authorized by the Partnership; or

(d) as required by Law (if the Partner has immediately notified the Partnership of that requirement of Law, unless precluded by Law from doing so).

(4) The Partnership may at any time require a Partner that ceases to be a Partner to immediately deliver to the Partnership or, at the Partnership's option, to immediately erase or destroy, any documents and other materials and copies and translations of them (whether recorded, stored or reproduced in or on any medium or by means of any device) containing any Confidential Information in the Partner's possession or control, except in the case of any Confidential Information that is in electronic format to the extent contained on archived back-up tapes that are not readily accessible. The Partner shall provide evidence satisfactory to the Partnership that all those documents, materials, copies and translations have been delivered, erased or destroyed.

(5) Each Partner acknowledges that a breach or threatened breach of its obligations under this 18.1 would result in irreparable harm to the Partnership that could not be calculated or adequately compensated by recovery of damages alone. Each Partner therefore agrees that the Partnership shall be entitled to interim or permanent injunctive relief, specific performance and other equitable remedies.

## Article 19
## GENERAL

**19.1 Governing Law.** This Agreement shall be governed by and construed in accordance with the Laws of the Province of Manitoba and the Laws of Canada applicable therein and shall be treated in all respects as a Manitoba contract.

**19.2 Severability.** Each provision of this Agreement is intended to be severable. If any provision hereof is found to be unenforceable by a court of competent jurisdiction, then such provision will be

deemed to be severed from this Agreement and the remainder of this Agreement will not be affected and will remain in full force and effect to the extent permitted by Law.

**19.3 Limited Partner Not a General Partner.** If any provision of this Agreement has the effect of imposing upon any Limited Partner any of the liabilities or obligations of the General Partner or the Partnership, such provision will be of no force or effect.

**19.4 Time of Essence.** Time shall be of the essence of this Agreement.

**19.5 Counterparts.** This Agreement may be executed in any number of counterparts with the same effect as if all Parties had signed the same document. Each counterpart so executed will constitute an original and all counterparts will be construed together and will constitute one and the same agreement.

**19.6 Further Assurances.** The Parties agree to execute and deliver such further and other documents, cause such meetings to be held, resolutions passed and by-laws enacted, exercise their votes and influence, and perform and cause to be performed such further and other acts and things, as may be necessary or desirable in order to give full effect to this Agreement and every part hereof.

**19.7 Binding Effect.** This Agreement will be binding upon and enure to the benefit of the Parties and, to the extent permitted hereunder, their respective successors and assigns.

**19.8 Entire Agreement.** This Agreement, the Tolko Fuel Supply Agreement, the Fuel Supplier Acknowledgement and Consent Agreement, any Tolko Fuel Supplier Liability Agreement and the Escrow Agreement (including after the termination or expiry of any Tolko Fuel Supplier Liability Agreement, the Tolko Fuel Supply Agreement and the Escrow Agreement to the extent any defined terms in those agreements are incorporated into this Agreement) constitute the entire agreement among the Parties with respect to the subject matter hereof and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, among the Parties with respect to the subject matter hereof. There are no conditions, covenants, representations, warranties, or other agreements between the Parties in connection with the subject matter hereof except as specifically set forth herein.

**[Signature page follows]**

**IN WITNESS WHEREOF**, the Parties have signed this Limited Partnership Agreement as of the day and year first above written.

**NICOLA VALLEY FUELCO INC.**

By: _____
Name: Xavier Pietri
Title: President

**NICOLA VALLEY FUEL HOLDCO LIMITED PARTNERSHIP** represented by its general partner Merritt Fuel HoldCo Inc.

By: _____
Name: Xavier Pietri
Title: President

**8909580 CANADA LTD.**

By: _____
Name:
Title:

By: _____
Name:
Title:

**IN WITNESS WHEREOF**, the Parties have signed this Limited Partnership Agreement as of the day and year first above written.

**NICOLA VALLEY FUELCO INC.**

By: _____
Name: Xavier Pietri
Title: President

**NICOLA VALLEY FUEL HOLDCO LIMITED PARTNERSHIP** represented by its general partner Merritt Fuel HoldCo Inc.

By: _____
Name: Xavier Pietri
Title: President

**8909580 CANADA LTD.**

By: _____
Name:
Title:

By: _____
Name:
Title:

# AMENDMENT TO LIMITED PARTNERSHIP AGREEMENT AND TRANSFER OF PARTNERSHIP INTEREST

This **Agreement** dated May 21, 2021 is

made **AMONG:** **NICOLA VALLEY FUELCO INC.**, a corporation existing under the laws of Canada,

(the "**Initial General Partner**")

**AND:** **NICOLA VALLEY FUEL HOLDCO LIMITED PARTNERSHIP**, a limited partnership existing under the laws of the Province of Manitoba,

("**NV HoldCo LP**")

**AND:** **8909580 CANADA LTD.** a corporation existing under the laws of Canada.

("**Tolko LP**")

## PREAMBLE

**WHEREAS:**

A. The Initial General Partner, NV HoldCo LP and Tolko LP formed Merritt FuelCo Limited Partnership (the "**Partnership**") pursuant to the provisions of the Act and a limited partnership agreement (the "**Limited Partnership Agreement**") dated July 7, 2014 made among the Initial General Partner, NV HoldCo LP and Tolko LP;

B. Section 11.5 of the Limited Partnership Agreement provides that, among other things, except as otherwise permitted pursuant to the provisions of Section 11.6, Section 11.7, Section 11.8 or Section 11.9, Tolko LP will not Transfer, directly or indirectly, its Partnership Interest, or any part thereof, or any right, title or interest therein; and

C. The Initial General Partner, NV HoldCo LP and Tolko LP are entering into this Agreement to (i) amend the Limited Partnership Agreement to allow Tolko LP to transfer its Partnership Interest to NV HoldCo LP as provided in this Agreement, and (ii) to provide for the transfer by Tolko LP of its Partnership Interest to NV HoldCo LP and the release of Tolko LP from the Limited Partnership Agreement.

**NOW THEREFORE**, the Parties agree as follows:

**1.1 Definitions.** Terms used in this Agreement, including in the preambles to this Agreement, which are defined in the Limited Partnership Agreement have the meanings given to those terms in the Limited Partnership Agreement unless otherwise defined in this Agreement.

**1.2 Amendment to Limited Partnership Agreement.** Notwithstanding Section 11.5 of the Limited Partnership Agreement, the Limited Partnership Agreement is hereby amended to permit the transfer by Tolko LP of its Partnership Interest to NV HoldCo LP pursuant to and as provided in this Agreement.

**1.3 Transfer by Tolko LP of its Partnership Interest to NV HoldCo LP.** Tolko LP hereby sells, transfers, assigns and conveys to NV HoldCo LP, and NV HoldCo LP hereby purchases and accepts, all of Tolko LP's Partnership Interest for the purchase price of $2,500 and the assumption of Tolko LP's obligations under the Limited Partnership Agreement. NV HoldCo LP hereby (i) assumes the obligations of Tolko LP under the Limited Partnership Agreement, and (ii) will pay the purchase price of $2,500 to Tolko LP upon execution and delivery of this Agreement (such transaction, the "**LP Interest Transfer**"). NV HoldCo LP acknowledges the certificates representing the Units included in the Partnership Interest being acquired from Tolko LP are contained in the Partnership record book. The Initial General Partner hereby approves the foregoing transfer and the form of the foregoing transfer of Tolko LP's Partnership Interest. The Initial General Partner will make any filings with any government authority that may be required as a result of the transactions contemplated in this Agreement.

**1.4 Representations and Warranties.** The parties to this Agreement represent and warrant as follows:

(a) Tolko LP represents and warrants to NV HoldCo LP that Tolko LP's Partnership Interest is transferred to NV HoldCo LP pursuant to this Agreement free and clear of all liens, encumbrances, charges, pledges, security interests and hypothecations; and

(b) each of Tolko LP, the Initial General Partner and NV HoldCo LP represents and warrants to the other parties that it has obtained all consents or other approvals that are required for it to enter into the transactions provided for in this Agreement.

These representations and warranties will survive the transfer of Tolko LP's Partnership Interest provided for in this Agreement.

**1.5 Mutual Release.**

(a) **Terms of Release.** In this Agreement, (i) "**Related Entities**" means a party's respective current and former affiliates, officers, directors, employees, partners, agents, representatives, administrators, successors, assigns, subsidiary corporations, parent corporations, and related corporate divisions and successors; and (ii) "**Released Claims**" means any and all manner of rights, claims, complaints, demands, causes of action, actions, suits, proceedings, liabilities and obligations of any nature and kind whatsoever and howsoever arising, at law or in equity, arising out of or relating to the

this Agreement, the Limited Partnership Agreement, or the LP Interest Transfer. For the sake of clarity, the Partnership is a Related Entity of Initial General Partner and NV HoldCo LP.

(b) **Release by Tolko**. Tolko LP on its own behalf and on behalf of its Related Entities hereby (i) acknowledges and agrees that, as a result of the LP Interest Transfer, Tolko LP is no longer a Limited Partner and (ii) releases, remises and forever discharges FuelCo and each of its Related Entities of and from all Released Claims.

(c) **Release by Initial General Partner and NV HoldCo LP**. Each of the Initial General Partner and NV HoldCo LP, on its own behalf and on behalf of its Related Entities, hereby (i) acknowledges and agrees that, as a result of the LP Interest Transfer, Tolko LP is no longer a Limited Partner and (ii) releases, remises and forever discharges Tolko LP and each of its respective Related Entities of and from all Released Claims.

**1.6 Further Assurances.** Each of the parties to this Agreement shall execute and deliver all further documents and perform all other acts as may be necessary or desirable to give effect to the terms of this Agreement.

**1.7 Enurement.** Each Agreement shall enure to the benefit of and shall be binding upon each of the parties to this Agreement and each of their respective successors and assigns.

**1.8 Independent Legal Advice.** Each of the parties to this Agreement acknowledges that this Agreement has been executed voluntarily after receiving independent legal advice.

**1.9 Governing Laws.** The validity, interpretation and enforceability of this Agreement shall be governed by the laws of the Province of British Columbia and the laws of Canada applicable therein. The parties to this Agreement hereby agree to attorn to the jurisdiction of the courts of the Province of British Columbia in respect of any disputes arising out of or resulting from this Agreement.

**1.10 Severability.** If any term or provision of this Agreement is held invalid or unenforceable, the invalidity or unenforceability thereof shall not be deemed to render any other terms and provisions hereof invalid or unenforceable.

**1.11 Entire Agreement.** This Agreement constitutes the whole and entire agreement between the parties hereto regarding the transfer of Tolko LP's Partnership Interest by Tolko LP to NV HoldCo LP and cancels and supersedes any prior agreements, undertakings, commitments and representations, written or oral, regarding the transfer of Tolko LP's Partnership Interest by Tolko LP to NV HoldCo LP.

**1.12 Counterparts.** This Agreement may be executed in counterparts each of which is deemed to be an original document and all of which are deemed one and the same document.

**[Signature page follows]**

**IN WITNESS WHEREOF**, the Parties have signed this Agreement as of the day and year first above written.

**NICOLA VALLEY FUELCO INC.**

By: _____
Name: Eric Train-Lagarde
Title: CEO

**NICOLA VALLEY FUEL HOLDCO LIMITED PARTNERSHIP**
represented by its general partner Merritt Fuel HoldCo Inc.

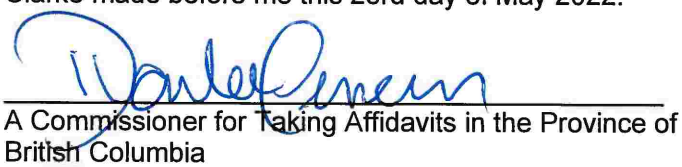
By: _____
Name:
Title:

**8909580 CANADA LTD.**

By: _____
Name: Troy Connolly
Title: Vice President, Solid Wood

By: _____
Name: Trevor Jahnig
Title: CFO

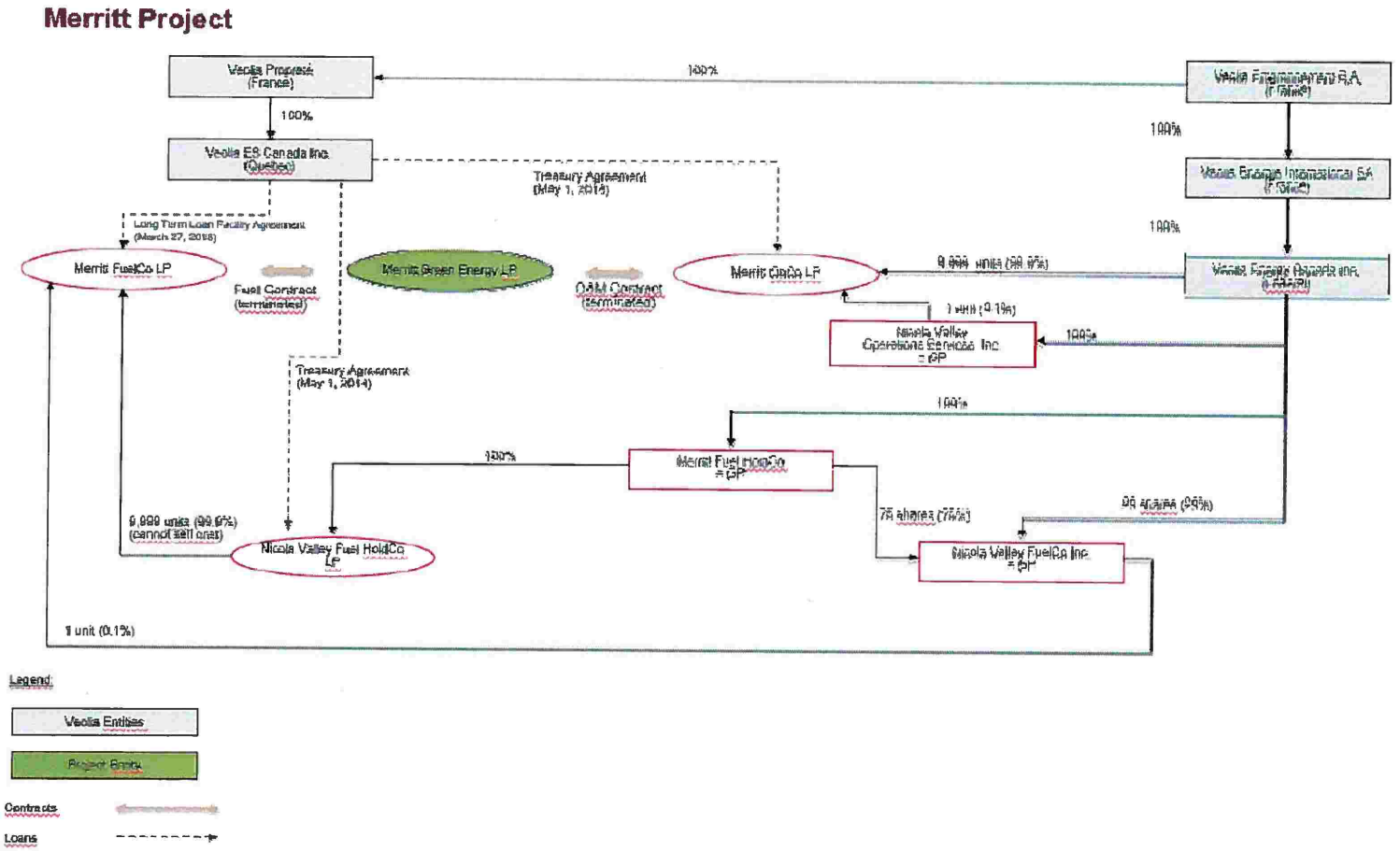
This is Exhibit "B" referred to in the Affidavit of Brian J. Clarke made before me this 23rd day of May 2022.



A Commissioner for Taking Affidavits in the Province of British Columbia

## EXHIBIT "B"

## Project Simplified Organizational Chart



This is Exhibit "C" referred to in the Affidavit of Brian J. Clarke made before me this 23rd day of May 2022.

A Commissioner for Taking Affidavits in the Province of British Columbia

# LONG TERM LOAN FACILITY AGREEMENT

between

**MERRITT FUELCO LIMITED PARTNERSHIP**

Borrower

and

**VEOLIA ES CANADA, INC.**

Lender

dated March 27, 2018

**THIS AGREEMENT IS MADE BETWEEN**

(1) **Merritt Fuelco Limited Partnership**, a limited partnership under the laws of Canada, whose registered address is : 201 Portage Avenue, Suite 2200, Winnipeg, MB, R3B 3L3, Canada,

hereinafter referred to as the "**Borrower**",

**AND**

(2) **Veolia ES Canada, Inc.**, a corporation incorporated under the laws of Canada, whose registered address is: 1705 3ème Avenue, Montreal, Quebec H1B 5M9, Canada

hereinafter referred to as the "**Lender**"

collectively, the "**Parties**" and each, individually, a "**Party**".

**WHEREAS**

(A) The Borrower is a joint venture, of which Veolia Environnement SA (VE) indirectly holds 45% but which VE, via its subsidiaries, has management control and fully consolidates.

(B) Considering the need for financing expressed by the Borrower and its financing forecasts and in particular, working capital expenditures associated with the procurement and processing of fibre for the Borrower, the Lender agreed to provide a long-term loan / line of credit, in an aggregate amount of up to CAD 1,000,000 (one million Canadian dollars) (the "**Loan**").

(C) The Loan is subject to the terms and conditions of this agreement (the "**Agreement**").

**IT IS AGREED AS FOLLOWS:**

## 1. DEFINITIONS - INTERPRETATION

### 1.1. Definitions

In this Agreement except where the context otherwise requires:

"**Breakage Costs**" means, in the event of a prepayment of all, or part, of the Loan, the difference, if any, between:

(i) the interests which the Lender should have received for the amount prepaid, from the date of prepayment up to the last day of the current Interest Period; and

(ii) the amount which the Lender would be able to obtain, by placing an amount equal to the prepaid amount, on deposit with a leading bank for the period stated in (i) above.

"**Business Day** means a day (other than a Saturday or Sunday) on which banks are open for general business in Montréal and in the principal financial centers of Canada;

"**CAD**" refers to the Canadian Dollar, the lawful currency of Canada;

"**PRIME CANADA**" means: the Canadian dollar prime rate as defined by Royal Bank of Canada (as referenced under CAPRRY on Bloomberg);

"**Change of Control**" means any change of the Borrower's voting rights or capital;

"**Commencement Date**" means March 27, 2018;

"**Default**" means an Event of Default or an event which, with the giving of notice, expiry of any applicable grace period or due to any decision taken based on this Agreement, would constitute an Event of Default;

"**Event of Default**" means any event specified as such in Clause 16 (*Events of Default*);

"**Final Maturity Date**" means March 26, 2028;

"**Interest Period**" means the interest period of the Loan as determined in accordance with Clause 8 (*Interest Period*);

"**Margin**" means 5.0% per annum;

"**Material Adverse Effect**" means that the legal or financial ability of the Borrower to perform its payment obligations under this Agreement is affected in a material way or the financial condition of the Borrower is significantly altered;

"**Quotation Day**" means, for any Interest Period, the second Business Day before the first day of the relevant Interest Period;

"**Reference Banks**" means the banks designated by the Lender; and

"**Reference Rate**" means Canadian Prime.

1.2. **Construction**

1.2.1. In this Agreement, unless the contrary intention appears, any reference to:

(a) "**assets**" includes present and future properties, revenues and rights of every description;

(b) an "**authorisation**" includes any authorisation, consent, approval, resolution, licence, exemption or registration;

(c) "**indebtedness**" includes any obligation, whether incurred as principal or as surety, for the payment or repayment of money, whether present or future, actual or contingent;

(d) a "**month**" is a reference to a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month;

(e) a "**person**" includes any individual, company, unincorporated association or body of persons (including a partnership, joint venture or consortium), government, state, agency, international organisation or other entity;

(f) a "**regulation**" includes any decree, regulation, rule, official directive, guideline or recommendation (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;

(g) "tax" means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same) existing on the Commencement Date or created afterwards;

(h) a provision of law is a reference to that provision as amended or re-enacted;

(i) a clause or an annex is a reference to a clause of or an annex to this Agreement;

(j) a person includes its successors, transferees and assigns; and

(k) this Agreement is a reference to this Agreement as amended or supplemented from time to time.

1.2.2. The annexes form an integral part of the Agreement and have the same binding force as the other provisions of the Agreement.

1.2.3. Unless the contrary intention appears, a time of day is a reference to Montreal time.

1.2.4. A Default or an Event of Default is deemed "outstanding" as long as it has not been remedied or waived.

## 2. LOAN

Subject to the terms of this Agreement, the Lender agrees to make the Loan available to the Borrower, which accepts it.

## 3. PURPOSE

The Borrower shall apply all amounts borrowed under the Loan towards working capital needs.

The Lender shall not be obliged to enquire or monitor the application of any amount borrowed under this Agreement, nor will it be liable for such enquiry or monitoring.

## 4. AVAILABILITY

4.1. On the Commencement Date, the Lender will make the Loan available by credit to the Borrower's current account open in the books of the Lender, if any, or to the Borrower's bank account, details of which shall have been given to the Lender no later than five Business Days before the Commencement Date.

4.2. The Lender will not be compelled to make the Loan available if on the Commencement Date :

(a) a Default is outstanding or the making of the Loan could result in a Default; or

(b) the representations and warranties stated in Clause 14 (*Representations and warranties*) and to be repeated on the Commencement Date are not correct in all material respects.

## 5. REPAYMENT

Without prejudice to the provisions of Clause 6 (*Voluntary prepayment*), the Loan shall be repaid in full on the Final Maturity Date.

## 6. PREPAYMENT

### 6.1 Illegality

If it becomes unlawful, for either Party, to perform its obligations as contemplated by this Agreement or to fund or maintain the Loan:

(a) it will inform the other Party, as soon as possible;

(b) the Loan will be immediately cancelled; and

(c) all sums due under this Agreement in principal, interest, default interest, commissions and fees will become immediately due and payable.

### 6.2 Voluntary prepayment

6.2.1 The Borrower may, at any time, prepay the Loan, in whole or in part.

6.2.2 Any prepayment under this Clause shall:

(a) take place on a Business Day; and

(b) be notified to the Lender no later than 5.00 p.m. (Eastern Time) five Business Days before the proposed prepayment date.

6.2.3 Any notice of voluntary prepayment is irrevocable.

### 6.3 Mandatory prepayment

The Lender may, by notice to the Borrower, cancel the Loan and declare all sums owed under this Agreement in principal, interest, default interest, commissions and fees and other expenses, immediately due and payable in any of the following cases:

(a) Change of Control of the Borrower; or

(b) The Loan or the operation underlying the Loan, as the case may be, is not submitted in due time or proper form for necessary filing or registration with or is not granted necessary approval by any relevant *de facto* or *de jure* government (or agency or instrumentality thereof), court, tribunal, administrative or other governmental authority or any other relevant entity (private or public).

### 6.4 Miscellaneous provisions

6.4.1 All prepayments under this Agreement shall be made together with accrued interest on the amount prepaid and, as the case may be, default interest, commissions, fees and other expenses payable in relation to this sum.

6.4.2 In case of a voluntary prepayment, the Lender may request the Borrower to pay the Breakage Costs caused by such prepayment (if any), on the date of that prepayment.

6.4.3 Any amount prepaid under this Clause 6 may not be borrowed again.

## 7 INTEREST

### 7.1 Calculation and payment of interest

7.1.1 The outstanding amount of the Loan will bear interest at a rate per annum equal to the sum of:

(a) the Reference Rate; and

(b) the Margin.

7.1.2 Accrued interest on the outstanding amount of the Loan will be paid by the Borrower on the last day of each Interest Period (or if the Interest Period exceeds six months, every six months after the Commencement Date), in accordance with Clause 17 (*Payments and Calculations*).

### 7.2 Priority of interest and principal payment over dividend payment

7.2.1 Unless the Lender has given its prior written consent, the Borrower shall not pay any distributions to its as long as any interest and principal payments are outstanding under this Agreement. The Loan shall be repayable by the Borrower to the Lender in priority over any distribution on any issued and outstanding Units under Section 10.6(2) of the Borrower's limited partnership agreement.

### 7.3 Default interest

7.3.1 Any sum payable by the Borrower to the Lender under this Agreement which is not paid on its due date shall bear interest, from the relevant due date (inclusive) until its actual date of payment (exclusive), at a rate per annum equal to the interest rate which would be calculated in accordance with Clause 7.1 (*Calculation and payment of interest*) on the relevant due date, as if such sum were an amount of principal of the Loan, plus 2%.

7.3.2 Default interest pursuant to Clause 7.3.1 shall accrue automatically as of right and without need of notification (*mise en demeure*) by the Lender. The payment by the Borrower of default interest shall not constitute the grant of an extension of the due date for the overdue amount or any waiver of the Lender's rights under this Agreement in relation to such overdue amount, and Clause 16 (*Events of Default*) shall remain fully applicable.

### 7.4 All-in rate (*taux effectif global*)

7.4.1 The parties expressly acknowledge that as a result of the characteristics of this Agreement and in particular the reference to a variable rate, it is not possible to determine the All-in Rate on the date of execution of this Agreement.

7.4.2 For instance, assuming PRIME CANADA is equal to 3.45% per annum on March 27, 2018, then the All in Rate would be 8.45% per annum.

7.4.3 If the all-in rate is less than zero, it will be deemed to be zero.

7.5 **Notification**

The Lender shall notify the Borrower, as soon as practicable of all interest rate determined pursuant to Clauses 7.1 and 7.3. Such interest rates will bind the Parties, save in case of manifest error.

## 8 INTEREST PERIODS

8.1 The Loan shall have interest periods of 3 months (each an "**Interest Period**"), provided that the first Interest Period shall start on the Commencement Date and end on the following earliest date: March 31st, June 30th, September 30th or December 31st.

8.2 If an Interest Period would end on a day which is not a Business Day, it will be extended to the following Business Day, unless such Business Day is in a different calendar month, in which case it will be shortened to the preceding Business Day.

8.3 If an Interest Period would end on a day which is past the Final Maturity Date, it will be automatically shortened so that there is no overrunning of the Final Maturity Date.

## 9 CHANGES TO THE CALCULATION OF INTEREST

9.1 If on a Quotation Day, the Lender determines that it is not possible, for any reason, to determine the Reference Rate as stated in Clause 1.1 (*Definitions*), it will immediately inform the Borrower and the following provisions of Clause 9 will apply.

9.2 The Lender and the Borrower shall enter into negotiations in order to determine, in good faith, a mutually acceptable substitution rate for the relevant Interest Period. If, within thirty days, the Borrower and the Lender have agreed on a substitute rate, it will apply retrospectively to the whole Interest Period.

9.3 If no agreement is reached within these thirty days, the applicable interest rate will be equal to the cost of funding of the Lender, plus the Margin.

## 10 TAXES

10.1 All payments to be made by the Borrower under this Agreement shall be made net of any tax or deduction for or on account of any taxes, whether actual or future.

10.2 Without prejudice to the above provisions, if a tax withholding or deduction applies, the Borrower shall increase its payments so that the Lender receives, after making the relevant withholding or deduction, the amount it would have been entitled to receive, had no withholding or deduction been required.

## 11 INCREASED COSTS

11.1 If, after the Commencement Date, the Lender incurs any increased cost due to (i) the introduction of any new law or regulation, or (ii) any change in the interpretation of any existing law or regulation, or (iii) a change in the application of an existing law or regulation by any official authority, it shall notify the Borrower immediately and provide an estimate of the relevant increased cost and applicable indemnity. The Lender shall also deliver to the Borrower any evidence or receipts of the aforementioned calculation, as soon as practicable.

11.2 The following provisions shall then apply:

(a) the Borrower and the Lender will enter into good faith negotiations to avoid or mitigate those costs; and

(b) if no agreement is found within thirty days following the receipt of the written notice set forth in Clause 12.1 above, the Borrower shall be entitled to :

(i) either continue the Loan, and bear the increased costs applicable from the date of receipt of the written notice set forth in Clause 12.1 above; or

(ii) terminate this Agreement and within seven Business Days prepay all sums owed under this Agreement in principal, interest, fees and others expenses while bearing the increased costs until the prepayment date.

11.3 In this Agreement, "**increased cost**" means any reduction in the effective return of the Lender or any additional cost or charge incurred by the Lender as a result of maintaining the Loan.

## 12 INDEMNITIES

Without prejudice to the other provisions of this Agreement, the Borrower shall, upon documented request, indemnify the Lender for:

(a) all costs and expenses (including any legal fees, taxes and breakage costs) reasonably incurred by the Lender in connection with the enforcement of, or the preservation of any rights under this Agreement (including by reason of an Event of Default); and

(b) all costs and expenses reasonably incurred by the Lender in responding to, evaluating, negotiating or complying with any amendment requested by the Borrower.

## 13 REPRESENTATIONS AND WARRANTIES

The Borrower makes the following representations and warranties to the Lender.

### 13.1 Status

The Borrower is duly incorporated and validly existing as a company under the laws of Canada. It has the power to own its assets and carry on its business.

### 13.2 Powers and authority

It has the power to enter into and perform this Agreement and the transactions contemplated by this Agreement.

### 13.3 Legal validity

This Agreement constitutes its legal, valid and binding obligations enforceable in accordance with its terms.

13.4 **Authorisations**

All authorisations required in connection with the entry into, performance, validity and enforceability of this Agreement have been obtained or effected and are in full force and effect.

13.5 **Non-conflict**

The entry into this Agreement and performance of the transactions contemplated by this Agreement do not conflict (i) with any law or regulation applicable to it or (ii) with its constitutional documents or (iii) with any agreement or instrument binding upon it.

13.6 ***Pari passu* ranking**

Its payment obligations under this Agreement (provided that such obligations do not benefit from a priority of payment according to any security interest (sûreté) granted under this Agreement) rank at least pari passu with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally.

13.7 **No default**

No Default is outstanding or may result from the Loan.

13.8 **No material adverse change**

There has been no material adverse change in the condition of the Borrower (whether financial, commercial, legal or otherwise) or in the prospects of the Borrower since the end of its last fiscal year.

13.9 **Repetition of representations and warranties**

The representations and warranties set out in this Clause 14 will, except for Clause 14.2, be repeated at the beginning of each Interest Period.

14 **UNDERTAKINGS**

The undertakings in this Clause will remain in force from the Commencement Date for so long as any amount is outstanding under this Agreement.

14.1 **Information**

The Borrower shall:

(a) promptly upon becoming aware of it, notify the Lender of any Default, together with the details of such Default and the steps taken to remedy such Default;

(b) promptly upon becoming aware of it, notify the Lender of any event (and in particular, any litigation, arbitration or administrative proceedings which are current or pending) which could have a Material Adverse Effect; and

(c) provide the Lender with any information or document, which the Lender may request in accordance with its internal auditing or control procedures, or which is requested by any regulatory authority.

**14.2 Status**

The Borrower shall do all such things as are necessary to maintain its corporate existence and ensure that it has the right and is duly qualified to conduct its business.

**14.3 Authorisations**

The Borrower shall obtain or maintain any authorisations required, as the case may be, to enable it to perform this Agreement.

**14.4 *Pari passu* ranking**

The Borrower shall procure that its payment obligations under this Agreement (provided that such obligations do not benefit from a priority of payment according to any security interest granted pursuant to this Agreement) will rank at least pari passu with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally.

**14.5 Compliance with law**

The Borrower shall comply with any law or regulation which is or may become applicable to it.

**15 EVENTS OF DEFAULT**

Each of the events set out in this Clause is an Event of Default.

**15.1 Non-payment**

The Borrower does not pay on the due date any amount of principal, interest, commissions, fees or expenses payable by it under this Agreement.

**15.2 Breach of other obligations**

The Borrower does not comply with any provision of this Agreement or breaches any of its undertakings under this Agreement.

**15.3 Misrepresentation**

A representation made by the Borrower is incorrect when made or repeated.

**15.4 Cross default**

(a) The Borrower fails to pay on the due date (after expiry of any applicable grace period) any sum due in respect of any financial indebtedness.

(b) Any financial indebtedness of the Borrower is declared, or becomes capable of being declared, payable as a result of a default of the Borrower or any other condition or event (howsoever described).

(c) The action or omission of the Borrower has resulted in an event of default under the contract as a result of a default of the Borrower or any other condition or event (howsoever described in such contract).

15.5 **Insolvency**

The Borrower:

(a) takes steps for its winding up or liquidation;

(b) an involuntary or voluntary case is commenced against the under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect; or a decree or order of a court having jurisdiction in the premises for the appointment of a receiver, liquidator, sequestrator, trustee, custodian, *administrateur judiciaire* or other officer having similar powers over the Borrower or over all or a substantial part of its property, shall have been entered; or the involuntary or voluntary appointment of an interim receiver, trustee or other custodian of the Borrower or for all or a substantial part of its property occurs; or a warrant of attachment or execution is issued, or a similar process is initiated, against any substantial part of the property of the Borrower, ;

(c) is in a situation where a moratorium is declared in respect of any of its debts;

(d) suspends making payments on any of its debts or admits inability to pay its debts as they fall due;

(e) becomes insolvent for the purpose of any insolvency law; or

(f) begins negotiations with one or more creditors with a view to the readjustment or rescheduling of any its debts.

15.6 **Creditors' process**

Any expropriation, attachment, sequestration, distress or execution affects any asset or assets of the Borrower.

15.7 **Cessation of Business**

The Borrower ceases, or takes clear steps to cease, to carry on all or a substantial part of its business.

15.8 **Material adverse change**

Any event or series of events occurs which has a Material Adverse Effect.

15.9 **Acceleration**

On and at any time after the occurrence of an Event of Default, and whilst the same is continuing, the Lender may, by notice to the Borrower:

(a) cancel the Loan; and/or

(b) declare all sums owed under this Agreement in principal, interest, default interest, commissions, fees and other expenses immediately due and payable.

## 16 PAYMENTS AND CALCULATIONS

16.1 All sums due by the Borrower under this Agreement shall be paid by debit of the Borrower's current account opened in its name in the Lender's books, or by transfer to the

Lender's bank account, references of which shall have been provided to the Borrower no later than 11.00 a.m. two Business Days before the date of payment.

16.2 Any payment made to the Lender shall be allocated in the following order:

(a) first, to the reimbursement of commissions;

(b) second, to the payment of any default interest;

(c) third, to the payment of any unpaid interest; and

(d) fourth, to the payment of any unpaid principal.

16.3 All payment under this Agreement shall be made on a Business Day. If a payment is due on a day which is not a Business Day, such payment will be deferred to the following Business Day, unless such Business Day is in a different calendar month, in which case the payment will be made on the preceding Business Day.

16.4 All payments under this Agreement shall be made in EUR unless otherwise expressly agreed.

16.5 Interest shall be capitalised on the sums which remain outstanding under this Agreement and interest will accrue on these sums in accordance with Clause 7.3 (*Default interest*).

16.6 Any interest, commission or fee will be calculated on the basis of the actual number of days elapsed in a year of 360 days.

## 17 SET OFF

17.1 If any amount due to the Lender under this Agreement is not paid on the due date or in accordance with this Agreement, the Lender may recover that sum by way of set off.

17.2 Any sum due by the Borrower under this Agreement will be paid for its gross amount without set off.

## 18 CHANGES TO THE PARTIES

18.1 This Agreement shall be binding upon and shall inure to the benefit of the Borrower and the Lender and their respective permitted successors and assigns.

18.2 The Borrower may not assign, transfer or dispose of any of its rights and/or obligations under this Agreement, including by way of merger or demerger, without the prior agreement of the Lender.

18.3 The Lender may at any time assign or transfer any of its rights and obligations, upon notice to the Borrower.

## 19 NOTICES

Any communication to be made under or in connection with this Agreement shall be made to the following addresses (or any other address notified under this Clause). A notice shall be deemed validly made on the date of its effective receipt by the addressee, i.e. the date mentioned on the acknowledgement of receipt.

For the Borrower:

**Merritt FuelCo Limited Partnership**
Attention: Andrew Rovansek, Director of Finance (Veolia North America, Municipal & Commercial Business – Canada)
Email: andrew.rovansek@veolia.com

For the Lender:

**Veolia ES Canada, Inc.**
**Att: Treasurer**
treasurysc@veolia.com and brian.sullivan@veolia.com

## 20 MISCELLANEOUS

### 20.1 Waivers and remedies cumulative

Failure by any Party to exercise or any delay in exercising its rights under this Agreement or under applicable law shall not operate as a waiver of these rights, and shall not be interpreted as such. The rights stipulated in this Agreement are cumulative with, and shall not prejudice, any other rights granted by law to the Parties.

### 20.2 Severability

In the event that any of the provisions of this Agreement is held to be void or unenforceable under applicable law, the other provisions of this Agreement will not be affected unless a Party can demonstrate that the relevant provision was essential in its decision to enter into this Agreement and it would not have entered in this Agreement without this provision.

## 21 APPLICABLE LAW – JURISDICTION

21.1 The Agreement shall be governed by the laws of Quebec, Canada.

21.2 Any dispute relating to its validity, construction or performance shall be exclusively settled by the by the courts of Montreal, Quebec.

[The signature page follows]

On March 27, 2018 in two originals.

**Veolia ES Canada, Inc.**

By: Brian Sullivan, Treasurer

**Merritt Fuelco Limited Partnership**
**By: Nicola Valley Fuelco Inc. (General Partner)**

By: John Gibson, Chief Operating Officer
Veolia Energy North America, Inc.

This is Exhibit "D" referred to in the Affidavit of Brian J. Clarke made before me this 23rd day of May 2022.

A Commissioner for Taking Affidavits in the Province of British Columbia

**BY EMAIL**

May 9, 2022

**Merritt FuelCo Limited Partnership**
3 Bentall Centre
PO Box 49314
Suite 2600- 595 Burrard Street
Vancouver, BC V7X 1L3
Attention: Stephane Jouzier
E-mail: stephane.jouzier@veolia.com

**RE: Notice of Termination and Demand for Payment**

Ladies and Gentlemen:

Reference is made to the *Long Term Loan Facility Agreement* dated March 27, 2018 (the "**Agreement**"), between Merritt FuelCo Limited Partnership (the "**Borrower**") and Veolia ES Canada Inc. (the "**Lender**"). Unless otherwise defined, all capitalized terms have the meaning ascribed to them in the Agreement.

The Lender is informed that the Borrower has effectively wound down and ceased its operations, a development which has a Material Adverse Effect and leads the Lender to believe that the amounts owing to it under the Agreement will not be paid in the foreseeable future. Moreover, the Lender will not advance additional funds to the Borrower, without which the Borrower will be unable to pay its liabilities as they become due. The Borrower is therefore clearly in default under sections 15.5 and 15.8 of the Agreement.

As of April 30, 2022, the total amount of indebtedness owing by the Borrower to the Lender under the Agreement in principal, interest, costs, and fees represents $13,751,727.79, plus continuing interest (the "**Indebtedness**").

Be advised that unless the totality of the Indebtedness is paid to the Lender by no later than May 19, 2022, the Lender will be entitled to and will immediately exercise its remedies without any further notice or delay, including all of the Lender's rights, remedies and recourses under the Agreement and at law. This Notice of Default and Demand for Payment is sent to you under reserve of the Lender's rights under the Agreement, including its right to raise additional defaults.

Yours Truly,

Brian Clarke, President and CEO
Veolia ES Canada Inc.

Affidavit #1 of
Brian J. Clarke in this case
affirmed May 23, 2022

No.
Estate No.
Province of British Columbia
Bankruptcy Division
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE BANKRUPTCY OF
MERRITT FUELCO LIMITED PARTNERSHIP & NICOLA VALLEY FUELCO INC.

**AFFIDAVIT**

I, Brian J. Clarke, businessperson, of 7907 N. Tripp, Skokie Illinois, 60076, United States of America, **AFFIRM THAT:**

1. I am a President and Chief Executive Officer of the Applicant, Veolia ES Canada Inc. ("**Veolia ES**" or the "**Applicant**"), a creditor and related entity of Merritt FuelCo Limited Partnership (the "**LP**"), and Nicola Valley FuelCo Inc. (the "**GP**" and collectively with the LP, herein referred to as the "**Debtors**") and as such, I have personal knowledge of the information deposed to in this affidavit, except where stated to be on information and belief, which information I believe to be true.

## A. The Parties and the Project

2. Veolia ES is a company incorporated under the *Canada Business Corporation Act* (R.S.C., 1985, c. C-44) (the "**CBCA**") having its principal place of business at 1705, 3rd Avenue, Montréal, Québec, Canada.

3. The GP is a corporation which was incorporated on January 21, 2014, under the CBCA with its registered office at 2000, Etchemin Street, Lévis, Québec, Canada, G6W 7X6. The GP was incorporated and exclusively acted for the sole purpose of being the general partner of the LP in the context of the Merritt Green Energy Project (the "**Project**"), and in such capacity, is liable for all of the debts of the LP.

4. The LP is a single purpose limited partnership that was formed between Nicola Valley Fuel HoldCo Limited Partnership and 8909580 Canada Ltd. as limited partners, and the GP, as general partner, pursuant to *The Partnership Act* (Manitoba) C.C.S.M. c. P30 and the *Merrit FuelCo Limited Partnership Agreement* dated July 7, 2014 (as amended from time to time, the "**LP Agreement**"), a copy of which is attached and marked hereto as **Exhibit "A"**. The LP's registered office is at 2600-595 Burrard St, 3 Bentall Centre, PO Box 49314, Vancouver British Columbia, Canada, V7X 1L3.

5. As further described below, the Debtors were respectively formed and incorporated for the specific purpose of entering into various agreements, acknowledgments and consents with third parties with a view to carry out the supply of fuel to the Project.

6. The Project is an electricity generation project located in Merritt, British-Columbia, that involves the burning of biomass. The central entity responsible for entering into different agreements to ensure the development of the Project is Merritt Green Energy Limited Partnership ("**ProjectCo**").

7. Veolia ES and the Debtors are part of a French multinational group of companies with activities in three main service and utility areas traditionally managed by public authorities: (i) water management, (ii) waste management and (iii) energy services.

8. The parent company of Veolia ES, Veolia Environnement S.A. (France), through its wholly owned indirect subsidiary, Veolia Energy Canada Inc. ("**Veolia Canada**"), formerly Dalkia Canada Inc. prior to January 7, 2016, holds controlling interests in the entities that provide services to the Project.

9. Attached hereto at **Exhibit "B"**, is a simplified organizational chart showing the Applicant, the Debtors and the main entities to which they are related.

## B. Project Financing and Agreements

10. In November 2013, ProjectCo closed on its financing for the Project which was made up of (i) equity investments by Fengate Capital Management Ltd. ("**Fengate Capital**") and Veolia Canada, and (ii) debt financing from a syndicate of secured lenders (the "**Lenders**").

11. The plan for the Project was for it to consume approximately 200,000 metric tonnes (dry) of biomass fuel annually to generate more than 40MW of renewable electricity, enough to power more than 40,000 homes for a year.

12. ProjectCo entered into the following agreements in connection with the Project:

(a) an EPC Contract with Iberdrola Energy Project Canada Corporations for the construction of the power plant located in the District Municipality of Merritt, British Columbia (the "**Plant**");

(b) an *Operations & Maintenance Contract* with Merritt Operations Services Limited Partnership ("**OpCo LP**") dated July 7, 2014 (the "**O&M Contract**"), pursuant to which OpCo LP agreed to provide services in relation to the operation and maintenance of the Project, including the manpower required to run the Plant; and

(c) a *Fuel Supply Agreement* dated July 7, 2014 (the "**Fuel Agreement**") with the LP, pursuant to which the LP agreed to supply fuel in an uninterrupted manner to ProjectCo to be used as fuel for the Plant.

13. The revenue source of the Project was an *Electricity Purchase Agreement* dated December 1, 2011, between British Columbia Hydro and Power Authority and ProjectCo.

14. On March 27, 2018, the Applicant entered into a *Long-Term Loan Facility Agreement* (as may have been amended from time to time, the "**Agreement**") with the GP on behalf of the LP, a copy of which is attached and marked hereto as **Exhibit "C"**. Pursuant to the Agreement, the Applicant agreed, among other things, to make certain amounts available to the Debtors to ensure the development of the Project.

### C. Sale of the Project and Winding-up of the Debtors

15. In recent years, the Project ran into several significant issues, including the following:

(a) the Project faced important construction delays and defects, which resulted in higher and unplanned expenses;

(b) shortly after the Plant was constructed, British Columbia was affected by major forest fires, which disrupted the biomass fuel supply in the area and increased Canadian softwood lumber tariffs; and

(c) the closure of several sawmills in the vicinity of the Project site and the unavailability of fuel in the market (caused in part by the forest fires in British

Columbia and by the COVID-19 pandemic) made it challenging to deliver fuel that complied with the specifications and requirements of the various agreements with third parties.

16. As a result of the various issues affecting the Project which triggered defaults under each of the O&M Contract and the Fuel Agreement, the Lenders, ProjectCo, the LP, OpCo LP, Veolia Canada and Fengate Capital, ultimately entered into of a *Settlement and Release Agreement* dated as of May 21, 2021 (the "**Settlement Agreement**").

17. As part of the Settlement Agreement, the O&M Contract and the Fuel Agreement were terminated on a consensual basis and all amounts owing by ProjectCo thereunder were concurrently released and extinguished. Moreover, a sale process was undertaken for the Project which culminated in a successful sale of the Project.

18. As at the date hereof:

(a) the Debtors have effectively completely wound down their operations, including a successful transfer of their employees to other entities of the Veolia group;

(b) substantially all of the assets of the Debtors have been sold;

(c) the Debtors are unable to satisfy the amounts owing to the Applicant; and

(d) the Debtors are no longer able to meet their obligations as they become due and are insolvent.

19. In this context, the Debtors have not made payments to the Applicant pursuant to the Agreement despite the Applicant having lent them a substantial amount which remains unpaid to date.

20. On May 9, 2022, the Applicant sent a notice of default to the LP, copy of which is attached and marked hereto as **Exhibit "D"**, requesting payment of the total amount of indebtedness owing by the LP to the Applicant under the Agreement in capital, interest, costs and fees, which represented CAD$13,751,727.79 as of April 30, 2022, plus continuing interest (the "**Debt**"). Pursuant to the terms of the Agreement, the Debtors are, as of the date hereof, justly and truly indebted to the Applicant in the sum of the Debt, the whole amount of the Debt is unsecured.

21. Despite the GP having its registered head office in the Province of Quebec, the principal locus of its business operations, and the location of the Project, is in the Province of British Columbia:

(a) The LP's registered office is in Vancouver, British Columbia; and

(b) The power plant, where the operations of the Project are carried out, is located in Merritt, in British Columbia.

22. The Debtors, which are part of the same corporate group as the Applicant, do not oppose the Bankruptcy Order sought as the latter will allow for an orderly supervised liquidation and complete wind down of the Debtors on a consolidated basis.

23. I am swearing this affidavit via video conference and am not physically present before the commissioner hereof. In swearing this affidavit, I am advised by the commissioner and do verily believe, that we have followed the process described in the "*Notice to the Profession, the Public and the Media Re: Affidavits for use in Court Proceedings*", issued on March 27, 2020, by Chief Justice C.E. Hinkson of the Supreme Court of British Columbia.

*I, Darlene Crimeni, confirm that while connected via video technology, Brian J. Clarke showed me the front and back of his government-issued photo identity document and that I am reasonably satisfied it is the same person and the document is current and valid. I confirm that I have reviewed each page of this affidavit with Brian J. Clarke and verify that the pages are identical.*

SWORN BEFORE ME at the city of Vancouver in the Province of British Columbia on May 23, 2022

Commissioner for Taking Affidavits

Brian J. Clarke, President and CEO
VEOLIA ES CANADA INC.

This is Exhibit "A" referred to in the Affidavit of Brian J. Clarke made before me this 23rd day of May 2022.

_____

A Commissioner for Taking Affidavits in the Province of British Columbia

Execution Version

# MERRITT FUELCO LIMITED PARTNERSHIP

## LIMITED PARTNERSHIP AGREEMENT

JULY 7, 2014

8408312.20

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# LIMITED PARTNERSHIP AGREEMENT

This Limited Partnership Agreement dated July 7, 2014 is made

**AMONG:** **NICOLA VALLEY FUELCO INC.**, a corporation existing under the laws of Canada,

(the "**Initial General Partner**")

**AND:** **NICOLA VALLEY FUEL HOLDCO LIMITED PARTNERSHIP**, a limited partnership existing under the laws of the Province of Manitoba,

("**NV HoldCo LP**")

**AND:** **8909580 CANADA LTD.** a corporation existing under the laws of Canada.

("**Tolko LP**")

## PREAMBLE

**WHEREAS** the Initial General Partner and the Limited Partners desire to form a limited partnership pursuant to the provisions of the Act (hereinafter defined);

**WHEREAS** the Initial General Partner and the Limited Partners wish to enter into a limited partnership agreement for the purpose of governing the relationship between the Partners and the conduct, affairs and activities of the Partnership and wish to include provisions that the Partnership shall remain a Single Purpose Entity, the whole in connection with the long term supply of biomass to the Merritt Green Energy Project (the "**Project**");

**NOW THEREFORE**, the Parties agree as follows:

## Article 1
## INTERPRETATION

**1.1 Definitions.** In this Agreement, the following words and phrases have the following meanings, respectively, unless the context otherwise requires:

"**Acceptance**" has the meaning set forth in Section 11.9(2).

"**Acceptance Period**" has the meaning set forth in Section 11.9(2).

"**Act**" means *The Partnership Act* (Manitoba).

"**Adjusted for CPI Inflation**" means adjusted each year by the same annual percentage increase from the same time in the prior year in the CPI.

"**Affiliate**" of a Person means any Person that directly or indirectly Controls, is Controlled by, or is under common Control with, that Person.

"**Agreement**" means this limited partnership agreement, as it may be amended or supplemented from time to time.

"**Arm's Length**" has the meaning given to it in the Income Tax Act.

"**Blocked Distributions**" has the meaning ascribed thereto in Section 7.3.

"**Business**" has the meaning ascribed thereto in Section 3.1.

"**Business Day**" means any day of the calendar year, other than a Saturday or Sunday or any day on which banks are generally not open for business in Toronto, Ontario or Vancouver, British Columbia.

"**Capital Account**" means, in relation to a Partner, an amount equal to such Partner's Capital Contribution after a deduction therefrom of any capital returned to such Partner and, where the context requires, means the individual account or accounts maintained by the General Partner in the books of the Partnership to which will be added the Partner's respective Capital Contribution.

"**Capital Contribution**" means, in relation to a Partner, the sum of money required to be paid to the Partnership by such Partner as a subscription price for Units subscribed for by such Partner, together with any additional amounts contributed or to be contributed by such Partner as capital in accordance with this Agreement.

"**Class A Partners**" has the meaning set forth in Section 11.1(2).

"**Class A Pro-Rata Portion**" has the meaning set forth in Section 11.1(2).

"**Class A Units**" means the Class A Units of the Partnership as provided in Article 5.

"**Class B Partner**" means a Limited Partner holding Class B Units.

"**Class B Pro-Rata Portion**" has the meaning set forth in Section 11.2(2).

"**Class B Units**" means the Class B Units of the Partnership as provided in Article 5.

"**Class C Net Capital**" in relation to a Class C Unit means:

(1) the Capital Contribution made in respect of the Class C Unit; minus

(2) distributions made pursuant to Article 7 in respect of the Class C Unit; plus

(3) Taxable Income allocated in respect of the Class C Unit; minus

(4) Taxable Losses allocated in respect of the Class C Unit;

"**Class C Partner**" means a Limited Partner holding Class C Units.

"**Class C Pro-Rata Portion**" means the proportion that the number of Class C Units owned by the Class C Partner is to the number of Class C Units owned by all of the Class C Partners.

"**Class C Units**" means the Class C Units of the Partnership as provided in Article 5.

"**Confidential Information**" means all information, documentation, knowledge, data or know-how owned, possessed or controlled by, or relating to, the Partnership or acquired or developed for its benefit, that the Partnership treats as confidential including, without limitation, trade secrets, proprietary, business and financial information, but excluding any information:

(1) that is or becomes part of the public domain by publication or otherwise without any breach of this Agreement;

(2) that is obtained on a non-confidential basis from another source acting in good faith without any breach of this Agreement; or

(3) that was not obtained from another source and that can be demonstrated by the recipient to have been known or independently developed by the recipient before disclosure to the recipient.

"**Control**" means the control exercised over a Person by the direct or indirect holding, as owner or other beneficiary, other than solely as the beneficiary of an unrealized security interest, of securities of such Person carrying more than 50% of the maximum possible number of votes that may be cast for the election or appointment of the directors of such Person and, in the case of a limited partnership, means the Control exercised over the general partner(s) thereof; and the terms "**Controlled**" and "**Controlling**" have the meanings correlative to the foregoing.

"**CPI**" means the Consumer Price Index for British Columbia, All Items (Not Seasonally Adjusted) as published by Statistics Canada, as adjusted or replaced from time to time.

"**Credit Agreement**" means the credit agreement dated as of the date hereof (as it may be amended, supplemented, restated or replaced from time to time) between, among others, Project Co, Union Bank S.A. as collateral agent, National Bank of Canada as the administrative agent and the persons who provided financing to Project Co for the Project named on the signature pages thereto (the "**Lenders**").

"**Creditor Partner**" has the meaning set forth in Section 7.5.

"**Current Account**" means the account established as set forth in Section 6.5.

"**Dalkia Fuel Supply Guarantee**" means the guarantee provided by Dalkia International S.A. and NV HoldCo LP to Project Co in connection with the FuelCo/Project Co Fuel Supply Agreement substantially in the form attached as Schedule C to this Agreement.

"**Date of Closing**" has the meaning set forth in Section 12.2.

"**Debt to Equity Ratio**" means:

(1) long term liabilities (excluding any current liabilities and excluding future income taxes),

divided by

(2) Net Assets.

"**Debtor Partner**" has the meaning set forth in Section 7.5.

"**Declaration**" means the declaration of limited partnership filed under the Act in respect of the Partnership and any amendments filed in respect thereto from time to time.

"**Default Class A and B Units**" has the meaning set forth in Section 11.8(1)(g).

"**Default Class C Units**" has the meaning set forth in Section 11.8(1)(h).

"**Default Period**" has the meaning set forth in Section 11.8(2).

"**Defaulting Partner**" has the meaning set forth in Section 11.8(1).

"**EPA**" means the electricity purchase agreement dated December 1, 2011 between Merritt Green Energy Limited Partnership and British Columbia Hydro and Power Authority (as amended).

"**Escrow Agent**" means one of Computershare Trust Company of Canada, CIBC Mellon Trust Company or TD Canada Trust Company as selected by Tolko LP prior to the Fuel Supply Commencement Date, or any other a Canadian trust company with an office in Vancouver, British Columbia selected by the Parties.

"**Escrow Agreement**" means an escrow agreement substantially in the form attached as Schedule B with such amendments acceptable to the parties to the escrow agreement, acting reasonably, as may be required by the Escrow Agent.

"**Escrowed Distributions**" means any distributions made pursuant to Section 7.1 on the Class B Units held by Tolko LP that are paid to and held by the Escrow Agent in escrow pursuant to the Escrow Agreement entered into pursuant to Section 7.7(2) and section 7.7(2) of the Tolko Fuel Supply Agreement and any interest earned on any such amounts while they are held by the Escrow Agent in escrow pursuant to the Escrow Agreement.

"**Escrowed Distributions Release Notice**" has the meaning given to that term in the Escrow Agreement.

"**Escrowed Fuel Price Payments**" means the amount of $2.48/ODT (in 2012 dollars as Adjusted for CPI Inflation each year after 2012) from payments for Residual Fibre and Shavings that have been delivered by Tolko to the Partnership pursuant to the Tolko Fuel Supply Agreement and are paid to and held by the Escrow Agent in escrow pursuant to the Escrow Agreement entered into pursuant to Section 7.7(2) and section 7.7(2) of the Tolko Fuel Supply Agreement and any interest earned on any such amounts while they are held by the Escrow Agent in escrow pursuant to the Escrow Agreement.

"**Event of Change**" has the meaning set forth in Section 11.8(1).

"**Fair Market Value**" means the price determined in an open and unrestricted market between informed prudent parties that are at Arm's Length and under no compulsion to act, expressed in terms of money or money's value.

"**Fiscal Year**" means the twelve (12) month period ending on the date provided in Section 10.1 in each calendar year.

"**Fuel Supplier Credit Risk**" has the meaning given to that term in the Tolko Fuel Supplier Liability Agreement.

"**Fuel Supplier Liability**" means any potential or outstanding obligation or liability of the Partnership pursuant to the FuelCo/Project Co Fuel Supply Agreement, the payment of which is guaranteed pursuant to the Dalkia Fuel Supply Guarantee, excluding:

(1) any obligation or liability of the Partnership payable solely as a result of an "O&M Default Termination" under section 17.1(1)(k) of the FuelCo/Project Co Fuel Supply Agreement (as the term "O&M Default Termination" is defined in the FuelCo/Project Co Fuel Supply Agreement); and

(2) if the Partnership re-sets to zero the liabilities of the Partnership in respect of damages or other amounts payable by the Partnership to Project Co pursuant to section 17.6(5) of the FuelCo/Project Co Fuel Supply Agreement without the prior written approval of Tolko LP (which consent may be given or withheld by Tolko LP in its sole discretion, with or without reason), any obligation or liability of the Partnership in excess of the "Supplier In-Contract Cap" as the "Supplier In-Contract Cap" existed prior to any such re-setting (as the term "Supplier In-Contract Cap" is defined in the FuelCo/Project Co Fuel Supply Agreement).

"**Fuel Supply Acknowledgement and Consent Agreement**" has the meaning given to that term in the Tolko Fuel Supply Agreement.

"**Fuel Supply Commencement Date**" has the meaning given to that term in the Tolko Fuel Supply Agreement.

"**FuelCo/Project Co Fuel Supply Agreement**" means the agreement to be entered into by the Partnership and Project Co for the supply of biomass in connection with the Project.

"**GAAP**" means generally accepted accounting principles in Canada for the Accounting Standards for Private Enterprises, applied consistently.

"**General Partner**" means the Initial General Partner, or any other Person admitted as a general partner of the Partnership and shown on the register maintained by the Partnership as a general partner of the Partnership.

"**Income Tax Act**" means the *Income Tax Act* (Canada) and the regulations thereunder applicable with respect thereto, as they may be amended from time to time.

"**Increase in Tolko's Actual Liability**" means, in the case of any Outstanding Potential Tolko Portion of a Fuel Supplier Liability, at any time and from time to time, any subsequent increase in the Maximum Actual Tolko Liability:

(1) as additional distributions are made on the Class B Units, or

(2) as additional payments are made for additional Residual Fibre and Shavings delivered to the Partnership pursuant to the Tolko Fuel Supply Agreement;

up to the amount of such Outstanding Potential Tolko Portion of a Fuel Supplier Liability.

"**Laws**" means all applicable statutes, codes, ordinances, decrees, rules, regulations, judicial or arbitral or administrative or ministerial or departmental or regulatory judgments, orders, decisions, rulings or awards, policies, decisions, public notices, directions, guidelines relating to the Partnership and/or its Business, or any provisions of such laws, including general principles of common and civil law and equity as may be in force from time to time; and "**Law**" means any one of the foregoing.

"**Lenders**" has the meaning given to that term in the definition of "Credit Agreement".

"**Limited Partners**" means, collectively, NV HoldCo LP, Tolko LP and any other Person who acquires Units as permitted by and in accordance with the provisions of this Agreement and is shown on the Register as a limited partner of the Partnership and "**Limited Partner**" means any one of them.

"**Long Term Fuel Supply Subcontracts**" means a fuel supply subcontract, the terms of which and counterparty are acceptable to the Lenders, acting reasonably, with a rolling term of no less than five years (meaning the term of the subcontract will automatically renew at the end of each year of its term for another year on the same terms except at an agreed price which is subject to the following sentence). The maximum price under the subcontract during each contract year, including renewal years, shall not exceed the difference between: (i) the price at which Project Co is then obligated to purchase fuel from the Partnership under the FuelCo/Project Co Fuel Supply Agreement, minus (ii) $3.32 per ODT. For greater certainty, "Long Term Fuel Supply Subcontracts" does not include the Tolko Fuel Supply Agreement.

"**Losses**" means all losses, claims, demands, actions, damages, liabilities, obligations, costs and expenses, including fines, penalties, amounts paid in settlement of claims, and legal fees on a solicitor-client basis, including reasonable disbursements.

"**Maximum Aggregate Potential Tolko Liability**" means, on any specific date, the amount calculated using the following formulae, without deducting any of the Tolko Aggregate Paid Amounts:

$$\text{Maximum Aggregate Potential Tolko Liability}_i = (25\%) \times (\text{MAQ}) \times (2 \text{ years}) \times (\text{Fuel Price}_i) \times (\text{CPI}_i / \text{CPI}_0)$$

Where:

- Maximum Aggregate Potential Tolko Liability $_i$ is the Maximum Aggregate Potential Tolko Liability in year $_i$ (the year during which the calculation is made);
- MAQ is the lower of (i) 200,000 ODTs/year, or (ii) if the Maximum Annual Quantity under the FuelCo/Project Co Fuel Supply Agreement is reduced from its current quantity of 200,000 ODTs/year, 200,000 ODTs/year minus the amount of that reduction.
- $CPI_0$ is the CPI on January 1, 2012;
- $CPI_i$ is the CPI on January 1 of year $_i$ (the year during which the calculation is made);
- Fuel Price $_i$ is equal to:
  - $52 until the end of Contract Year 5;
  - $54 in Contract Years 6 to 10;
  - $56 in Contract Years 11 to 15;
  - $58 in Contract Years 16 to 20;
  - $60 in Contract Years 21 to 25;
  - $62 from and after Contract Year 26; and

- "Contract Year" has the meaning given to that term in the FuelCo/Project Co Fuel Supply Agreement.

- "Maximum Annual Quantity" has the meaning given to that term in the FuelCo/Project Co Fuel Supply Agreement.

"**Maximum Actual Tolko Liability**" means, on any specific date, the amount equal to:

(1) the aggregate amount of all distributions on the Class B Units from the date of the Agreement until that specific date pursuant to the Agreement, including the Blocked Distributions and the Escrowed Distributions, plus

(2) an amount equal to $2.48/ODT (in 2012 dollars as Adjusted for CPI Inflation each year after 2012) times the aggregate number of ODTs of Residual Fibre and Shavings that have been delivered to the Partnership pursuant to the Tolko Fuel Supply Agreement from the date of the Tolko Fuel Supply Agreement until that specific date,

up to but not exceeding the then Maximum Aggregate Potential Tolko Liability, minus the then Tolko Aggregate Paid Amounts, an illustration of which is set forth in Schedule A to this Agreement.

"**Net Assets**" means the sum of capital stock and retained earnings.

"**Non-Defaulting Partner(s)**" has the meaning set forth in Section 11.8(1)(g).

"**Notice of Sale**" has the meaning set forth in Section 11.9(1).

"**NV Holdco LP**" has the meaning given to that term on page one of this Agreement, and includes its permitted assigns and its successors, by amalgamation or otherwise.

"**ODT**" means 1,000 kilograms at 0% moisture content.

"**Offered Units**" has the meaning set forth in Section 11.9(1).

"**Offeree(s)**" has the meaning set forth in Section 11.9(1).

"**Offeror**" has the meaning set forth in Section 11.9(1).

"**O&M Contractor**" means Merritt Operations Services Limited Partnership.

"**Other Fuel Supplier Subcontractor**" means any Person having executed a contract with the Partnership for the supply of biomass to the Project for a term equal to or longer than the then remaining term of the FuelCo/Project Co Fuel Supply Agreement, excluding Tolko and its Affiliates.

"**Outstanding Liabilities**" has the meaning set forth in Section 7.7(3)(f)(i).

"**Outstanding Potential Tolko Portion of a Fuel Supplier Liability**" means, in the case of any Fuel Supplier Liability that the Partnership was not able to fund entirely from cash flow generated by its operations all or any portion of which was funded by any one or more of (i) the issuance of Units pursuant to Section 11.3, (ii) pursuant to the Dalkia Fuel Supply Guarantee and (iii) pursuant to any Tolko Fuel Supplier Liability Agreements, the difference between:

(1) twenty-five percent (25%) off the amount of the Fuel Supplier Liability funded by any one or more of the issuance of Units pursuant to Section 11.3, pursuant to the Dalkia Fuel Supply Guarantee and pursuant to any Tolko Fuel Supplier Liability Agreements, and

(2) the amount funded by any one or more of the issuance of Units to Tolko LP pursuant to Section 11.3 and pursuant to any Tolko Fuel Supplier Liability Agreements;

up to the Maximum Actual Tolko Liability.

"**Parties**" means the parties to this Agreement, and "**Party**" means any one of them.

"**Partners**" means collectively, the Limited Partners and the General Partner, and subject to the terms and conditions hereof, their respective successors and assigns, and "**Partner**" means any one of them.

"**Partnership**" means Merritt FuelCo Limited Partnership formed under the Declaration and this Agreement.

"**Partnership Interest**" means all right, title and interest in the Partnership of a Partner, including, without limitation, a Partner's Units and a Partner's rights under this Agreement.

"**Permitted Transferee**" means a wholly-owned Affiliate of the Limited Partner transferring its Units.

"**Person**" means an individual, corporation, body corporate, partnership, trust, unincorporated organization, governmental body or any trustee, executor, administrator, other legal representative or other form of entity or organization or other person of any nature whatsoever, whether now or hereafter in existence.

"**Prime Rate**" means, for any day, a rate per annum equal to the annual rate of interest established by National Bank of Canada as being its reference rate then in effect for determining interest rates for commercial loans denominated in Canadian Dollars made in Canada.

"**Project**" has the meaning set forth in the preamble.

"**Project Co**" means Merritt Green Energy Limited Partnership, its successors and permitted assigns.

"**Proportionate Share**" has the meaning set forth in Section 11.8(1)(g).

"**Remaining Potential Tolko Liability**" means the difference between the Maximum Aggregate Potential Tolko Liability minus the Tolko Aggregate Paid Amounts.

"**Required Escrow**" means Tolko LP has not delivered to the Chief Financial Officer or Treasurer of Dalkia Canada Inc., as the case may be, the certificate required under Section 7.8(1) within the time required under Section 7.8(1) confirming that Tolko's Debt to Equity Ratio was lower than 1 and that Tolko's Net Assets were greater than $400,000,000.

"**Residual Fibre**" means sawdust and hog fuel generated by the operations at the Sawmill.

"**Sawmill**" means the Nicola Valley sawmill located in Merritt, British Columbia, currently owned and operated by Tolko.

"**Securities**" means Class A Units and any rights, warrants, options and other instruments entitling the holder, whether or not on a contingency, to acquire Class A Units of the Partnership from treasury, and any instruments convertible, whether or not on a contingency, into any of the foregoing.

"**Shavings**" means wood shavings generated by the operations at the Sawmill.

"**Single Purpose Entity**" means a Person, which:

(1) is formed or organized solely for the purpose of the business of the Partnership as described in Section 3.1;

(2) does not engage, directly or indirectly, in any business other than the business of the Partnership as described in Section 3.1;

(3) holds itself out as being a Person, separate and apart from any other Person;

(4) does not commingle its assets with those of any other Person;

(5) conducts its own business in its own name or, where not so permitted by law, in the name of the General Partner and provided its own business is restricted to the business of the Partnership as described in Section 3.1;

(6) does not acquire obligations or securities of its Partners or any Affiliate thereof other than as permitted by this definition of Single Purpose Entity;

(7) does and will correct any known misunderstanding regarding its separate identity; and

(8) shall at all times be authorized to carry on business in the Province of British Columbia.

"**Special Resolution**" means (a) any resolution passed by the affirmative vote of Limited Partners who collectively hold more than 50% of the total number of issued and outstanding Class A Units and Limited Partners who collectively hold more than 50% of the total number of issued and outstanding Class B Units at a meeting of the Partnership duly called and at which a quorum is present, or (b) any written resolution signed in one or more counterparts by Limited Partners who collectively hold more than 50% of the total number of issued and outstanding Class A Units and Limited Partners who collectively hold more than 50% of the total number of issued and outstanding Class B Units.

"**Suspension Period**" has the meaning set forth in Section 7.6.

"**Taxable Income**" or "**Tax Loss**", in respect of any Fiscal Year means, respectively, the amount of income or loss for tax purposes of the Partnership for such period as determined in accordance with this Agreement and the provisions of the Income Tax Act (including the amount of the taxable capital gain or allowable capital loss from the disposition of each capital property of the Partnership).

"**Time of Closing**" has the meaning set forth in Section 12.2.

"**Tolko**" means Tolko Industries Ltd. and its successors, by amalgamation and otherwise.

"**Tolko Aggregate Paid Amounts**" means, on any specific date, the aggregate of, without duplication:

(1) all amounts actually paid by Tolko or Tolko LP to the Partnership, Dalkia International S.A or NV HoldCo LP pursuant to any Tolko Fuel Supplier Agreements;

(2) all amounts paid by Tolko LP for the issuance of additional Units in the Partnership pursuant to Section II.2, Section II.3 or Section II.4 of this Agreement (including the amount of any Blocked Distributions actually disbursed pursuant to Section 7.3(a) of this Agreement as payment by Tolko LP for the issuance of Units in the Partnership to Tolko LP) to raise funds for the Partnership to pay a Fuel Supplier Liability or for any Outstanding Potential Tolko Portion of a Fuel Supplier Liability, but excluding any portion of such amounts paid by Tolko LP for the issuance of additional Units in the Partnership that is returned pursuant to Section II.3(5);

(3) with respect to any Escrowed Distributions:

(a) in the case of any Escrowed Distributions which are the property of Tolko LP pursuant to Section 7.7(2)(a), the amount of such Escrowed Distributions actually paid to the Partnership or to either one or both of Dalkia International S.A or NV HoldCo LP as contemplated in Section 7.7(3) of this Agreement, but excluding any portion of such Escrowed Distributions actually paid to the Partnership that is returned pursuant to Section II.3(5); and

(b) in the case of any Escrowed Distributions which become the property of the Partnership pursuant to Section 7.7(2)(b), the amount of such Escrowed Distributions that should have been paid to the Partnership or to either one or both of Dalkia International S.A or NV HoldCo LP in accordance with the Escrow Agreement as and when contemplated in Section 7.7(3) of this Agreement, regardless of whether or to whom those Escrowed Distributions are actually disbursed (including, for example, if those Escrowed Distributions are seized by a creditor of the Partnership instead of being paid to the Partnership or to either one or both of Dalkia International S.A or NV HoldCo LP as and when contemplated in Section 7.7(3) of this Agreement), excluding (i) any portion of such Escrowed Distributions that are actually disbursed to Tolko LP as contemplated in Section 7.7(3) of this Agreement and (ii) any portion of such Escrowed Distributions that are not paid to the Partnership or to either one or both of Dalkia International S.A or NV HoldCo LP as a result of any act or omission of Tolko or Tolko LP; and

(4) with respect to any Escrowed Fuel Price Payments:

(a) in the case of any Escrowed Fuel Price Payments which are the property of Tolko pursuant to section 7.7(2)(a) of the Tolko Fuel Supply Agreement, the amount of such Escrowed Fuel Price Payments actually paid to the Partnership or to either one or both of Dalkia International S.A or NV HoldCo LP as contemplated in section 7.7(3) of the Tolko Fuel Supply Agreement; and

(b) in the case of any Escrowed Fuel Price Payments which become the property of the Partnership pursuant to section 7.7(2)(b) of the Tolko Fuel Supply Agreement, the amount of such Escrowed Fuel Price Payments that should have been paid to the Partnership or to either one or both of Dalkia International S.A or NV HoldCo LP in accordance with the Escrow Agreement as and when contemplated in section 7.7(3) of the Tolko Fuel Supply Agreement, regardless of whether or to whom those Escrowed Fuel Price Payments are actually disbursed (including, for

example, if those Escrowed Fuel Price Payments are seized by a creditor of the Partnership instead of being paid to the Partnership or to either one or both of Dalkia International S.A. or NV HoldCo LP as and when contemplated in section 7.7(3) of the Tolko Fuel Supply Agreement), excluding (i) any portion of such Escrowed Fuel Price Payments that are actually disbursed to Tolko as contemplated in section 7.7(3) of the Tolko Fuel Supply Agreement and (ii) any portion of such Escrowed Fuel Price Payments that are not paid to the Partnership or to either one or both of Dalkia International S.A. or NV HoldCo LP as a result of any act or omission of Tolko or Tolko LP; and

(5) all amounts paid by Tolko pursuant to section 17.2 of the Tolko Fuel Supply Agreement, excluding any amounts paid by Tolko pursuant to section 17.2 of the Tolko Fuel Supply Agreement that under section 18.3(1) of the Tolko Fuel Supply Agreement are excluded from the limitations on Tolko's liability set out in section 18.2(1) of the Tolko Fuel Supply Agreement.

**"Tolko Fuel Supplier Liability Agreement"** means a fuel supplier liability agreement entered into by Tolko, Tolko LP, FuelCo, Dalkia International S.A. and NV HoldCo LP in connection with any Fuel Supplier Liability substantially in a form attached as Schedule F to the Tolko Fuel Supply Agreement for all or any portion of the Maximum Actual Tolko Liability.

**"Tolko Fuel Supply Agreement"** means the agreement to be entered into by the Partnership and Tolko for the supply of biomass to the Partnership in connection with the Project.

**"Tolko LP"** has the meaning given to that term on page one of this Agreement, and includes its permitted assigns and its successors, by amalgamation or otherwise.

**"Transfer"** includes any sale, exchange, assignment, gift, bequest, disposition, mortgage, hypothecation, charge, pledge, encumbrance, grant of security interest or other arrangement by which possession, legal title or beneficial ownership passes, directly or indirectly, from one Person to another, whether or not voluntary and whether or not for value, and any agreement to effect any of the foregoing.

**"Transferor"** has the meaning set forth in Section 11.7.

**"Trigger Event"** has the meaning ascribed thereto in Section 7.3.

**"Undistributed Amounts"** means, in the case of any Units being redeemed pursuant to Section 11.2(6):

(1) in the case of any Class A Units and any Class B Units, the total aggregate amount of net Taxable Income of the Partnership allocated to those Units during the time that those Units have been issued and outstanding, minus the aggregate amount of all distributions (including all Blocked Distributions and Escrowed Distributions) that have been made on those Units; and

(2) in the case of any Class C Units, the amount of $1.00 per Unit.

**"Units"** means the Class A Units, Class B Units and the Class C Units of the Partnership as provided for in Article 5.

**1.2 Additional Rules of Interpretation.**

(1) *Headings and Table of Contents.* The inclusion in this Agreement of headings of Articles and Sections and the provision of a table of contents are for convenience of reference only and are not intended to be full or precise descriptions of the text to which they refer.

(2) *Section References.* Unless the context requires otherwise, references in this Agreement to Articles, Sections and Subsections are to Articles, Sections and Subsections of this Agreement.

(3) *Statute References.* Unless otherwise indicated, all references in this Agreement to any statute include the regulations thereunder, in each case as amended, re-enacted, consolidated, supplemented or replaced from time to time and in the case of any such amendment, re-enactment, consolidation, supplement or replacement, reference herein to a particular provision shall be read as referring to such amended, re-enacted, consolidated or replaced provision.

(4) *Document References.* All references herein to any agreement (including this Agreement) or document mean such agreement or document as amended, restated, supplemented or replaced from time to time in accordance with the terms thereof and, unless otherwise specified therein, includes all schedules and exhibits attached thereto.

(5) *Currency.* Except as otherwise expressly provided in this Agreement all dollar amounts referred to in this Agreement are stated in Canadian dollars.

(6) *Reference to Acts Performed by the Partnership or Rights of the Partnership.* For greater certainty, where any reference is made in this Agreement to an act to be performed by the Partnership or to rights of the Partnership, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by the General Partner on behalf of the Partnership or some other Person duly authorized to do so by the General Partner or pursuant to the provisions hereof, or to rights of the General Partner, in its capacity as General Partner of the Partnership, as the case may be.

(7) *Preamble.* The preamble hereto shall form an integral part of this Agreement.

## Article 2
## FORMATION OF PARTNERSHIP AND RELATIONSHIP BETWEEN THE PARTIES

**2.1 Formation of Partnership.** The Parties agree to and hereby form a limited partnership in accordance with the Laws of the Province of Manitoba and the provisions of this Agreement with the Parties being, as of the date hereof, the only Partners in the Partnership. The Partners shall from time to time execute such certificates, statements or other documents, and do such filings and recordings and perform such other acts, as shall be required in order to comply with the requirements of the Laws of the Province of Manitoba for the formation of a limited partnership.

**2.2 Name.** The name of the Partnership shall be **MERRITT FUELCO LIMITED PARTNERSHIP**. The General Partner shall have the right to change the name of the Partnership as it deems appropriate, from time to time, including in order to comply with the Laws of the jurisdiction in which the Partnership may carry on its activities. If the General Partner changes the name of the Partnership, the General Partner shall file or cause to be filed a change in a limited partnership form or other prescribed form in compliance with the Act and *The Business Names Registration Act* (Manitoba) amending the Declaration by changing the name of the Partnership and the General Partner shall provide notice of the new name to the Partners within twenty (20) days of such change.

**2.3 Principal Office.** The principal office of the Partnership shall at all times be located at the principal business office of the General Partner located in Canada and may be changed from time to time by the General Partner giving notice of such change to the Partners within twenty (20) days of such change. The Business shall be conducted at such place or places as may from time to time be selected or approved by the General Partner.

**2.4 Commencement and Term of Partnership.** The Partnership shall commence as of the date of the registration of the Declaration in accordance with the Act and will continue until dissolution and termination pursuant to the terms hereof. The Partnership will not dissolve or terminate solely by virtue of the admission or resignation of a Partner or the repurchase of a Partner's Units or solely by virtue of any amendment to the terms of this Agreement. The General Partner shall renew the registration of the Partnership every three (3) years, as prescribed under *The Business Names Registration Act* (Manitoba).

## Article 3
## PURPOSE OF THE PARTNERSHIP AND RESTRICTIONS ON THE BUSINESS OF THE PARTNERSHIP

**3.1 Purpose and Business.** The Partnership is a Single Purpose Entity and shall not at any time cease to be a Single Purpose Entity. The Partnership's purpose and business activities (the "**Business**") are limited to the following:

(1) the supply of biomass for the Project or to any other Person;

(2) the entering into of the FuelCo/Project Co Fuel Supply Agreement and the performance of its obligations thereunder;

(3) the entering into of the Tolko Fuel Supply Agreement and the performance of its obligations thereunder;

(4) the entering into of the operations interface agreement dated as at the date hereof among Project Co, the O&M Contractor and the Partnership and the performance of its obligations thereunder;

(5) the acknowledgement and consent by the Partnership in favour of Union Bank, N.A.;

(6) the acknowledgement and consent agreement, in respect of the operations interface agreement referred to under Section 3.1(4), among Union Bank, N.A., Project Co, the O&M Contractor and the Partnership; and

(7) undertaking such other activities as are necessary, desirable or appropriate to carry out the foregoing permitted activities of the Partnership, or ancillary or incidental in connection with such activities, including (i) subject to Section 3.3, the entering into of a management services agreement with Dalkia Canada Inc. or one of its Affiliates and the performance of its obligations thereunder and (ii) the performance and maintenance of works relating to such activities, it being understood that the Partnership shall not engage directly or indirectly in any activity other than activities necessary, desirable or appropriate to carry out the foregoing permitted activities.

**3.2 Amendments to the FuelCo/Project Co Fuel Supply Agreement, EPA or Operations Interface Agreement.** As long as Tolko LP is a limited partner in the Partnership, the Partnership will not agree to any:

(1) amendments to the FuelCo/Project Co Fuel Supply Agreement;

(2) settlements of any disputes under the FuelCo/Project Co Fuel Supply Agreement that would give rise to a Fuel Supplier Liability that cannot be funded entirely out of the Partnership's internally generated cash flows;

(3) amendments to the EPA that require the approval of the Partnership under the FuelCo/Project Co Fuel Supply Agreement; or

(4) settlements of any disputes under the operations interface agreement referred to in Section 3.1(4) regarding the allocation of responsibility between the O&M Contractor and the Partnership under that agreement, including in regard to any amounts payable by the Partnership under Article 6 of that agreement;

without the prior written consent of Tolko LP, such consent not to be unreasonably withheld or delayed.

**3.3 Management Agreement With Dalkia Canada Inc.** The management services agreement entered into by the Partnership with Dalkia Canada Inc. or one of its Affiliates pursuant to Section 3.1(7), and any other agreement that may be entered into by the Partnership with Dalkia Canada Inc. or any of its Affiliates, will be on market terms and conditions and the amount payable by the Partnership under the agreements will, for as long as Tolko LP is a limited partner in the Partnership, be subject to the prior written consent of Tolko LP, such consent not to be unreasonably withheld or delayed. Tolko LP hereby consents to the management services agreement to be entered into concurrently with the execution of this Agreement by the Partnership with Dalkia Canada Inc. pursuant to Section 3.1(7).

## Article 4
## STATUS AND POWERS OF THE PARTNERS

**4.1 Status of the General Partner.**

(1) The General Partner represents and warrants to the other Partners that:

(a) it is duly constituted or formed and validly existing under the Laws of the jurisdiction of its incorporation and has the corporate power, authority and capacity to enter into and give full effect to, and perform its obligations under, this Agreement;

(b) the execution and performance of this Agreement has been duly authorized by it and duly executed by or on behalf of the General Partner;

(c) the execution and performance of this Agreement does not and will not contravene the provisions of its articles, by-laws, constating documents or other organizational documents or the provisions of any agreement or other instrument to which it is a party or by which it may be bound;

(d) no authorization, consent or approval, other than those obtained, is required in connection with its execution or performance of this Agreement;

(e) this Agreement constitutes a valid and binding obligation of the General Partner enforceable against it in accordance with its terms, subject to limitations on enforcement imposed by bankruptcy, insolvency, reorganization or other Laws affecting the enforcement of the rights of creditors and others to the extent that equitable remedies are only available in the discretion of the court from which they are sought;

(f) its Partnership Interest is not a "tax shelter investment" within the meaning assigned by the Income Tax Act;

(g) it is not a "non-resident" of Canada for the purposes of the Income Tax Act; and

(h) other than as provided in Section 7.6 of this Agreement to the extent that the Partnership may be considered to be a party to this Agreement, there are currently no finance or other documents or agreements to which the Partnership is a Party that would restrict distributions under Section 7.1(1).

(2) The General Partner covenants that:

(a) the representations and warranties set out in Subsection 4.1(1) shall remain true and accurate for so long as it remains the general partner of the Partnership, including the representation and warranty that that it is not a "non-resident" of Canada for the purposes of the Income Tax Act;

(b) it shall take all actions required to qualify, continue and keep in good standing the Partnership as a limited partnership under the Laws of the Province of Manitoba and to maintain the limited liability of each Limited Partner in each jurisdiction in which the Partnership may carry on business or own or lease property;

(c) it shall devote to the conduct of the Business such time as may be reasonably required for the proper management and administration thereof; and

(d) it shall make, or cause to be made, on its own behalf and on behalf of the Partnership, all such elections, declarations, allocations or filings necessary or desirable throughout the term of the Project.

**4.2 Status of the Limited Partners.**

(1) Each of the Limited Partners, severally (and not jointly and severally), represents and warrants for itself to the other Partners that:

(a) it is duly constituted or formed and validly existing under the Laws under which it was constituted or formed and has the power, authority and capacity to enter into and give full effect to, and perform its obligations under, this Agreement;

(b) the execution and performance of this Agreement has been duly authorized by it and duly executed by or on behalf such Limited Partner;

(c) the execution and performance of this Agreement does not and will not contravene the provisions of its articles, by-laws, constating documents or other organizational documents or the provisions of any agreement or other instrument to which it is a party or by which it may be bound;

(d) no authorization, consent or approval, other than those obtained, is required in connection with its execution or performance of this Agreement;

(e) this Agreement constitutes a valid and binding obligation of such Limited Partner enforceable against it in accordance with its terms, subject to limitations on enforcement imposed by bankruptcy, insolvency, reorganization or other Laws

affecting the enforcement of the rights of creditors and others to the extent that equitable remedies are only available in the discretion of the court from which they are sought;

(f) its Partnership Interest is not a "tax shelter investment" within the meaning assigned by the Income Tax Act; and

(g) it is not a "non-resident" of Canada for the purposes of the Income Tax Act or, in the case of a Limited Partner that is a partnership, it is a "Canadian partnership" within the meaning assigned by the Income Tax Act.

(2) Each Limited Partner, severally (and not jointly and severally), covenants for itself that its representations and warranties set out in Subsection 4.2(1) shall remain true and accurate for so long as it remains a limited partner of the Partnership, including the representation and warranty that it is not a "non-resident" of Canada for the purposes of, or is a "Canadian partnership" within the meaning assigned by, the Income Tax Act.

(3) Notwithstanding Article 11, each Limited Partner covenants and agrees that it will not transfer or purport to transfer any or all of its Units to any Person who is or would be unable to truthfully make the representations and warranties in Subsection 4.2(1).

**4.3 Compliance with Laws.** Each Limited Partner will, on request by the General Partner, immediately execute such certificates, documents and other instruments as may be necessary to comply with any law or regulation of any jurisdiction in Canada pertaining to the continuation, operation and maintenance of the Partnership in good standing.

**4.4 Binding Effect of Agreement.** Any Person admitted to the Partnership as a Partner shall be subject to and bound by all the provisions of this Agreement as if originally a Party to this Agreement as from the date of its admission.

**4.5 Unlimited Liability of General Partner.** The General Partner will have unlimited liability for the debts, liabilities and obligations of the Partnership.

**4.6 Limited Liability of Limited Partners.**

(1) Subject to the provisions of applicable Laws:

(a) the liability of a Limited Partner for the debts, liabilities and obligations of the Partnership will be limited to the amount of such Limited Partner's Capital Contribution and a Limited Partner will not be liable for any further claims or assessments, including, for greater certainty, the debts, liabilities and obligations of any other Partner; and

(b) no provision of this Agreement will have the effect of giving the General Partner the authority or power to increase the liability of a Limited Partner.

## Article 5
## UNITS

**5.1 Number of Units.**

(1) The authorized capital in the Partnership shall consist of an unlimited number of Class A Units, an unlimited number of Class B Units and an unlimited number of Class C Units. The Partnership Interest of each Partner will be represented by the number of Units issued to such Partner.

(2) The Partnership shall issue Units only as fully-paid and non-assessable upon or simultaneously with receipt of the subscription price payable for such Units.

**5.2 Attributes of Units.**

(1) Each Partner shall have the following rights and obligations in respect of the Class A Units, if any, held by it:

(a) the right to one (1) vote for each Class A Unit held by such Partner; and

(b) the right to distributions (including upon dissolution, liquidation or winding up of the Partnership) made in accordance with Article 7.

(2) Each Partner shall have the following rights and obligations in respect of the Class B Units, if any, held by it:

(a) the right to one (1) vote for each Class B Unit held by such Partner; and

(b) the right to distributions (including upon dissolution, liquidation or winding up of the Partnership) made in accordance with Article 7.

(3) Each Partner shall have the following rights and obligations in respect of the Class C Units, if any, held by it:

(a) the right to distributions (including upon dissolution, liquidation or winding-up of the Partnership) made in accordance with Article 7.

(4) Upon each distribution on the Class C Units pursuant to Section 7.1(2)(a), a number of Class C Units equal to the dollar amount of the distributions actually paid to the Class C Partners shall be automatically cancelled effective on the first day of the next Fiscal Year after the Fiscal Year in which the distribution was made. For greater clarity, once all Class C Partner's Class C Units are cancelled, that Partner will cease to be a Class C Partner until it subscribes for additional Class C Units, if applicable.

**5.3 Priorities and Rights of Units.** Except as expressly provided in this Agreement, no Partner shall have any preference, priority or right in any circumstance over any other Partner in respect of the Units held by it (other than arising out of or resulting from the number and type of such Units, respectively, held by such Partner).

**5.4 Units Outstanding.**

(1) The Parties acknowledge that the Partners hold such number of Units as set forth below on the date hereof in the amounts and the type set forth opposite their names:

| Unitholder | Number and Class of Units | Subscription Price ($) | Percentage of Units Outstanding |
|---|---|---|---|
| **NV HoldCo LP** | 7,499 Class A Units | $1 per Unit | 74.99% (of all Units) |

| Unitholder | Number and Class of Units | Subscription Price ($) | Percentage of Units Outstanding |
|---|---|---|---|
| Tolko LP | 2,500 Class B Units | $1 per Unit | 25% (of all Units) |
| General Partner | 1 Class A Unit | $1 per Unit | 0.01% (of all Units) |
| TOTAL: | 10,000 Units | $1 per Unit | 100% of all Units |

(2) Subject to the provisions of this Agreement, no Units, in addition to the Units issued and outstanding as set out in Section 5.4(1), may be issued or offered for issuance by the Partnership, without the consent of the General Partner.

**5.5 Fair Market Value of Class A and B Units.** In any case when the Fair Market Value of any Class A Unit and Class B Unit is required, including in Section 11.1(2) and Section 11.2(2) but excluding Section 11.8(3) and Section 13.5(2), the Fair Market Value will be as agreed to by all of the Partners at that time, and if they do not agree then as determined by a valuator experienced in the valuation of energy projects, independent from the Parties, appointed by the General Partner. The valuator shall determine the Fair Market Value as an expert and not as an umpire or arbitrator. The valuator may seek such information from the Parties as may, in the opinion of the valuator, be reasonably required to effectively determine the Fair Market Value and each Party shall provide such information to the valuator if it is in that Party's possession or control.

## Article 6
## CAPITAL CONTRIBUTIONS

**6.1 Capital.** The capital of the Partnership shall be the aggregate amount of the Capital Contributions of the Limited Partners and the General Partner.

**6.2 Capital Contributions.** As at the date hereof, the initial Capital Contribution of each Partner is $1.00 for each Unit held by such Partner.

**6.3 Withdrawal of Capital.** No Partner will be entitled to withdraw or make a demand for withdrawal of its Capital Contribution in whole or in part except upon the dissolution and termination of the Partnership pursuant to or in accordance with the terms and conditions of this Agreement.

**6.4 Capital Account**

(1) The General Partner will establish, or cause to be established, a separate Capital Account on the books of the Partnership for each Partner to record the aggregate Capital Contributions of such Partner with respect to each class of Units held by such Partner.

(2) On receipt of a Capital Contribution, the General Partner will add to, or cause to be added to, the Capital Account of a Partner, with respect to the Units in respect of which a Capital Contribution was made, the amount of such Capital Contribution.

**6.5 Current Account.** The General Partner will establish, or cause to be established, a separate account on the books of the Partnership for each Partner in respect of each class of Units held by such Partner to which the amount of income of the Partnership for accounting purposes allocated to each Partner in respect of each class of Units will be added and to which losses of the Partnership for accounting purposes and all advances or distributions to Partners in respect of each class of Units will be subtracted. For greater certainty the balance of the Current Account may be a negative amount.

**6.6 No Partnership Interest Payable.** No interest will be paid or payable to any Partner on any credit balance in its Capital Account or Current Account unless approved by the Partners and in accordance with the Act.

## Article 7
## DISTRIBUTIONS

**7.1 Distributions**

(1) Subject to the restrictions in any finance documents to which the Partnership is a Party, the provisions of Section 7.6, applicable Laws and to there being adequate provision for capital expenditures, working capital, accruals for liabilities and adequate reserves, the Partnership will use its commercially reasonable efforts to distribute one hundred percent (100%) of all amounts that are available for distribution, including amounts referred to in Section 11.3(4), on a quarterly basis.

(2) Except as provided in Section 11.3(5) in the case of subscription prices being returned to Partners as provided in Section 11.3(5), distributions will be made in the following priority:

(a) first, if any Class C Units are issued and outstanding, distributions will be made to the Class C Partners up to, in the aggregate, the amount of the Capital Contribution made by each such Class C Partner in respect of the Class C Units, such distributions to be made to the Class C Partners in their respective Class C Pro-Rata Portion; and

(b) second, once distributions equal to the Capital Contribution of the Class C Units have been made or if there are no Class C Units issued and outstanding:

(i) if any Class B Units are issued and outstanding:

a. seventy-five percent (75%) to the Class A Partners in their respective Class A Pro-Rata Portion; and

b. twenty-five percent (25%) to the Class B Partners in their respective Class B Pro-Rata Portion; or

(ii) if no Class B Units are issued and outstanding, to the Class A Partners in their respective Class A Pro-Rata Portion.

**7.2 Advances.** Distributions otherwise payable to a Limited Partner during a year under Section 7.1, upon the reasonable request of a Limited Partner, shall not be paid to the Limited Partner during the year, but shall be paid to such Limited Partner immediately after the end of the year. The amount otherwise payable to that Limited Partner on a distribution date as a cash distribution shall instead be loaned to the Limited Partner on an interest-free basis, which loan shall be repaid immediately after the end of the year by way of set off against the cash distribution then payable to the Limited Partner pursuant to this Section 7.2. For purposes of this Agreement, except in this Section 7.2, such loans shall be considered cash distributions.

**7.3 Blocked Distributions.** Notwithstanding any other provision of this Agreement, if (i) Tolko or Tolko LP is in breach of its obligations under any Tolko Fuel Supplier Liability Agreement, or (ii) Tolko is in breach of any obligation to indemnify and save harmless the Partnership under section 17.2(1) of the Tolko Fuel Supply Agreement (a **"Trigger Event"**), then, from the date of any such breach and during the continuance of the Trigger Event, distributions that would have otherwise been made to, on behalf of or for

the benefit of Tolko LP up to a maximum amount equal to the Remaining Potential Tolko Liability at the time of any such distributions will be retained by the Partnership and not distributed to Tolko LP (all distributions that would have otherwise been paid to Tolko LP that are retained by the Partnership are referred to as the "**Blocked Distributions**") until:

(a) the Partnership is issuing Units pursuant to Section 11.3, including pursuant to Section 11.3(4), on any specific date, at which time the Blocked Distributions will be used as payment by Tolko LP for the issuance of Class B Units to Tolko LP up to the lesser of (i) the number of Class B Units to be issued to Tolko LP pursuant to Section 11.3 on such specific date, and (ii) the amount of the Blocked Distributions; or

(b) the Trigger Event has ceased, at which time the Blocked Distributions (net of any amount of the Blocked Distributions used as payment by Tolko LP for the issuance of Units to Tolko LP pursuant Section 11.3 as referred to in Section 7.3(a) above) will, subject to the provisions of Section 7.6, be distributed and paid to either Tolko LP or the Escrow Agent in accordance with Section 7.7.

Any Blocked Distributions shall remain the property of the Partnership until it is distributed and paid to either Tolko LP or the Escrow Agent in accordance with Section 7.7, but for all other purposes, including for the purposes of Section 6.5 and Article 8 and for purposes of payment of Units as contemplated in Section 7.3(a), a Blocked Distribution will be treated as a distribution at that time to Tolko LP.

7.4 **Maximum Blocked Distributions.** The aggregate amount of all Blocked Distributions shall not exceed the Remaining Potential Tolko Liability at that time.

7.5 **Set-Off.** The General Partner shall set-off against any distribution that would otherwise be payable to a Partner the amounts due and payable by such Partner or any of its Affiliates to the Partnership. Similarly, if any amount is due and payable by a Partner or one of its Affiliates (the "**Debtor Partner**") to another Partner or one of its Affiliates (the "**Creditor Partner**") in connection with the Project, the General Partner, at the request of the Creditor Partner, shall pay any distribution that would otherwise be payable to the Debtor Partner to the Creditor Partner and such payment shall be repayment of such amount by the Debtor Partner to the Creditor Partner. The General Partner shall be entitled to withhold from any distribution payable to a Partner the amount of all claims by the Partnership or a Creditor Partner against such Partner or any of its Affiliates, during the period where any such claim is being pursued in good faith by the Partnership or the Creditor Partner, that, if finally determined in favour of the Partnership or the Creditor Partner, could be set-off pursuant to this Section 7.5. Distributions payable to a Partner which are set-off against any distribution that would otherwise be payable to a Partner or paid to a Creditor Partner or withheld pursuant to this Section 7.5 will be treated as distributions at that time to the Partner at the time of the first to occur between set-off, payment or withholding for purposes of Section 6.5 and Article 8.

7.6 **Conditions to Distributions**

(1) Notwithstanding any other provision of this Agreement, no distribution shall be made on the Class A Units or the Class B Units without the consent of NV HoldCo LP and Fengate (FSJ) Holdings LP:

(a) during any financial quarter of Project Co commencing with the fourth financial quarter of Project Co following COD (as such term is defined in the EPA) and continuing until the end of the seventh financial quarter of Project Co following COD (as such term is defined in the EPA), if as of the last day of the financial

quarter the aggregate delivery of fuel under the FuelCo/Project Co Fuel Supply Agreement since COD (as such term is defined in the EPA) that was produced at the Sawmill and/or sourced under one or more Long Term Fuel Supply Subcontracts during the prior four financial quarters was less than 75,000 ODTs (or such lesser quantity as provided below in the case where there has been a Suspension Period) on a rolling four-financial quarter basis (i.e. measured at the end of each financial quarter for the previous four-financial quarter period) and as a result Project Co is not entitled to make distributions to its special partners due to the restrictions on Project Co in the Credit Agreement;,

(b) during any financial quarter of Project Co commencing with the eighth financial quarter of Project Co following COD (as such term is defined in the EPA) and each financial quarter thereafter,, if as of the last day of the financial quarter the aggregate delivery of fuel under the FuelCo/Project Co Fuel Supply Agreement that was produced at the Sawmill and/or sourced under one or more Long Term Fuel Supply Subcontracts during the prior eight financial quarters was less than an average of 75,000 ODTs/year (150,000 ODTs for such eight financial quarters) (or such lesser quantity as provided below in the case where there has been a Suspension Period) on a rolling eight financial-quarter basis (i.e. measured at the end of each financial quarter of Project Co for the previous eight financial-quarter period) and as a result Project Co is not entitled to make distributions to its special partners due to the restrictions on Project Co in the Credit Agreement;

(c) during any financial quarter of Project Co commencing with the first financial quarter of Project Co following COD (as such term is defined in the EPA) and continuing until the end of the third quarter of Project Co following COD (as such term is defined in the EPA), if as of the last day of the financial quarter the average price at which the Partnership purchased fuel during such financial quarter for delivery to Project Co under the FuelCo/Project Co Fuel Supply Agreement was greater than the difference between: (i) the average price at which Project Co purchased fuel from the Partnership under the FuelCo/Project Co Fuel Supply Agreement during such financial quarter, minus (ii) $3.32 per ODT, and as a result Project Co is not entitled to make distributions to its special partners due to the restrictions on Project Co in the Credit Agreement; and

(d) during any financial quarter of Project Co commencing with the fourth financial quarter of Project Co following COD (as such term is defined in the EPA) and each financial quarter thereafter, if as of the last day of the financial quarter the average price at which the Partnership purchased fuel during the preceding completed four financial quarters for delivery to Project Co under the FuelCo/Project Co Fuel Supply Agreement was greater than the difference between: (i) the average price at which Project Co purchased fuel from the Partnership under the FuelCo/Project Co Fuel Supply Agreement during such four financial quarter period, minus (ii) $3.32 per ODT, on a rolling four-financial quarter basis (i.e. measured at the end of each financial quarter for the previous four-financial quarter period), and as a result Project Co is not entitled to make distributions to its special partners due to the restrictions on Project Co in the Credit Agreement.

In the case where delivery of fuel under the FuelCo/Project Co Fuel Supply Agreement has been suspended for an event of "Force Majeure" (as defined in the FuelCo/Project Co Fuel Supply Agreement) claimed by

the Partnership and accepted by Project Co under the FuelCo/Project Co Fuel Supply Agreement (a "**Suspension Period**"), the 75,000 ODTs/year referred to in Section 7.6(1)(a) (in the case where any of the Suspension Period occurred during the time period referred to in Section 7.6(1)(a)) and the average of 75,000 ODT/year referred to in Section 7.6(1)(b) (in the case where any of the Suspension Period occurred during the time period referred to in Section 7.6(1)(b)) will be reduced to the amount obtained when 75,000 ODTs is multiplied by: (i) the number of days during the applicable period that were not part of the Suspension Period, divided by (ii) the total number of days in the applicable period (including the number of days during the applicable period that were part of the Suspension Period), provided that the Suspension Period(s) will not apply for more than a total of 365 calendar days in any eight-quarter period in aggregate.

**7.7 Security for Tolko's and Tolko LP's Obligations**

(1) As security for the payment by Tolko and Tolko LP of the Maximum Aggregate Potential Tolko Liability:

(a) provided Tolko is not at the time subject to a Required Escrow, Tolko LP may, prior to the Fuel Supply Commencement Date, and, once each year thereafter within 120 days following any financial year-end of Tolko, deliver to the Partnership a Tolko Fuel Supplier Liability Agreement signed by Tolko and Tolko LP for all or any portion of any Remaining Potential Tolko Liability at the time of execution of such Tolko Fuel Supplier Liability Agreement and, if requested by the Partnership, a legal opinion from Tolko's legal counsel in the form attached as Schedule 4 to the Fuel Supplier Liability Agreement with respect to such Tolko Fuel Supplier Liability Agreement, and upon receipt of such a Tolko Fuel Supplier Liability Agreement and, if requested by the Partnership, legal opinion, the Partnership shall execute and deliver the Tolko Fuel Supplier Liability Agreement, shall cause the Tolko Fuel Supplier Liability Agreement to be executed and delivered by Dalkia International S.A. and NV HoldCo LP, shall, if the Partnership has requested a legal opinion from Tolko's counsel, cause the Partnership's legal counsel to deliver a legal opinion in the form attached as Schedule 5 to the Fuel Supplier Liability Agreement with respect to such Tolko Fuel Supplier Liability Agreement and shall reimburse the reasonable costs and expenses incurred by Tolko for the issuance of the legal opinion by Tolko's legal counsel;

(b) a Tolko Fuel Supplier Liability Agreement delivered by Tolko LP pursuant to Section 7.7(1)(a) may, provided Tolko is not at the time subject to a Required Escrow, be provided in exchange for existing Escrowed Distributions that are held by the Escrow Agent in escrow pursuant to the Escrow Agreement entered into pursuant to Section 7.7(2) or in substitution for future Escrowed Distributions that would in the absence of the Fuel Supplier Liability Agreement be paid to the Escrow Agent and held by the Escrow Agent in escrow pursuant to the Escrow Agreement entered into pursuant to Section 7.7(2), or for a combination of both, and:

(i) if Tolko LP delivers to the Partnership a Tolko Fuel Supplier Liability Agreement and, if requested by the Partnership, a legal opinion, pursuant to Section 7.7(1)(a) in exchange for any existing Escrowed Distributions that are held by the Escrow Agent in escrow pursuant to the Escrow Agreement entered into pursuant to Section 7.7(2), then provided Tolko is not at that time subject to a Required Escrow the amount of the existing

Escrowed Distributions for which the Tolko Fuel Supplier Liability Agreement has been provided in substitution shall be released from escrow and disbursed to Tolko LP as contemplated in Section 7.7(3)(c);

(ii) if Tolko LP delivers to the Partnership a Tolko Fuel Supplier Liability Agreement and, if requested by FuelCo, a legal opinion, pursuant to Section 7.7(1)(a) in substitution for any future Escrowed Distributions that would, in the absence of the Tolko Fuel Supplier Liability Agreement, be paid by the Partnership to the Escrow Agent and held by the Escrow Agent in escrow pursuant to the Escrow Agreement entered into pursuant to Section 7.7(2), then those future Escrowed Distributions shall be paid to Tolko LP rather than to the Escrow Agent unless Tolko subsequently becomes subject to a Required Escrow;

(iii) if Tolko subsequently becomes subject to a Required Escrow, the Tolko Fuel Supplier Liability Agreement shall terminate to the extent it applies to any future Escrowed Distributions but shall remain valid and in effect to the extent it applies to any Escrowed Distributions that have already been released from escrow and disbursed to Tolko LP as a result of the exchange or substitution of that Tolko Fuel Supplier Liability Agreement for the Escrowed Distributions that have been released and disbursed to Tolko LP pursuant to Section 7.7(1)(b)(i) and for the Escrowed Distributions paid directly to Tolko LP instead of to the Escrow Agent pursuant to Section 7.7(1)(b)(ii) (and Tolko LP and the Partnership shall, if requested by either of them, replace that Tolko Fuel Supplier Liability Agreement with a Tolko Fuel Supplier Liability Agreement and, if requested by the Partnership, legal opinions under Section 7.7(1)(a) that only applies to the amount of the Escrowed Distributions that have by that time been either released from escrow and disbursed to Tolko LP or paid directly to Tolko LP instead of to the Escrow Agent);

(c) if at any time after the Fuel Supply Commencement Date there is any portion of any Remaining Potential Tolko Liability at that time for which Tolko LP has not delivered to the Partnership a Tolko Fuel Supplier Liability Agreement pursuant to Section 7.7(1)(a) or for which a Tolko Fuel Supplier Liability Agreement has been terminated pursuant to Section 7.7(1)(b)(iii) with respect to future Escrowed Distributions, any distributions that are subsequently made pursuant to Section 7.1 on the Class B Units held by Tolko LP up to a maximum amount equal to any Remaining Potential Tolko Liability at that time for which Tolko LP has not delivered to the Partnership a Tolko Fuel Supplier Liability Agreement pursuant to Section 7.7(1)(a) or for which a Tolko Fuel Supplier Liability Agreement has been terminated pursuant to Section 7.7(1)(b)(iii) with respect to future Escrowed Distributions will, except as otherwise provided in Section 7.7(1)(d), be paid by the Partnership to the Escrow Agent and held by the Escrow Agent in escrow pursuant to the Escrow Agreement entered into pursuant to Section 7.7(2); and

(d) notwithstanding Section 7.7(1)(c), if at any time after the Fuel Supply Commencement Date there is any Outstanding Potential Tolko Portion of a Fuel Supplier Liability and a subsequent Increase in Tolko's Actual Liability that is not paid using Escrowed Fuel Price Payments pursuant to section 7.7(1)(d) of the Tolko Fuel Supply Agreement or Blocked Distributions pursuant to Section 7.3(a),

any distributions that are subsequently made pursuant to Section 7.1 on the Class B Units held by Tolko LP up to a maximum amount equal to the Increase in Tolko's Actual Liability will be kept by the Partnership for the issuance of Units to Tolko LP pursuant to Section 11.3 instead of being paid to the Escrow Agent pursuant to Section 7.7(1)(c).

Any Escrowed Distributions shall be the property of Tolko LP as provided under Section 7.7(2)(a) or the property of the Partnership as provided under Section 7.7(2)(b), but for all other purposes, including for the purposes of Section 6.5 and Article 8 and for purposes of payment of Units as contemplated in Section 11.3(4), Escrowed Distributions will be treated as a distribution at that time to Tolko LP.

(2) Prior to the Fuel Supply Commencement Date, the Parties will (i) engage the Escrow Agent to act as escrow agent pursuant to the Escrow Agreement, (ii) negotiate in good faith and acting reasonably to settle the Escrow Agreement with the Escrow Agent, and (iii) execute and deliver the Escrow Agreement with the Escrow Agent once it is settled. The Escrow Agreement shall require the Escrow Agent to hold any Escrowed Distributions paid to it by the Partnership pursuant to Section 7.7(1)(c) and any Escrowed Fuel Price Payments paid to it pursuant to section 7.7(1)(c) of the Tolko Fuel Supply Agreement in escrow and not disburse them except as provided in the Escrow Agreement. The Escrowed Distributions shall, while they are held by the Escrow Agent:

(a) be the property of Tolko LP except as otherwise provided in Section 7.7(2)(b), and as general continuing security for the obligation of Tolko LP to subscribe for Units pursuant to Section 11.3, the obligation of Tolko under section 17.2 of the Tolko Fuel Supply Agreement and the obligations of Tolko and Tolko LP under any Tolko Fuel Supplier Liability Agreements (collectively, the **"Tolko Secured Obligations"**), Tolko LP hereby grants a security interest to the Partnership, Dalkia International S.A. and NV Holdco LP in all of the Escrowed Distributions that are held by the Escrow Agent at any time and from time to time while they are the property of Tolko. Upon default by Tolko or Tolko LP in payment or performance of the Tolko Secured Obligations, each of the Partnership, Dalkia International S.A. and NV Holdco LP may exercise any or all of the remedies available to a secured creditor under applicable Laws; and

(b) notwithstanding Section 7.7(2)(a), the Partnership may, with the approval of Tolko based on the most recent annual financial statements of Dalkia International S.A., such approval not to be unreasonably withheld, provide a guarantee of Dalkia International S.A. in a form to be negotiated in good faith between Dalkia International S.A and Tolko LP, acting reasonably, based on the form of the Dalkia Fuel Supply Guarantee that is acceptable to Tolko LP and Dalkia International S.A., each acting reasonably, pursuant to which Dalkia International S.A. guarantees the payment to Tolko LP of any amount of the Escrowed Distributions held by the Escrow Agent that are to be released from escrow and returned to Tolko LP in accordance with the Escrow Agreement as contemplated in Section 7.7(3) and the repayment to Tolko of any amount of the Escrowed Fuel Price Payments held by the Escrow Agent that are to be released from escrow and returned to Tolko in accordance with the Escrow Agreement as contemplated in section 7.7(3) of the Tolko Fuel Supply Agreement (other than the failure of those Escrowed Distributions to be released from escrow and returned to Tolko LP or those Escrowed Fuel Price Payments to be released from escrow and returned to Tolko due to any act or omission of Tolko LP or Tolko), and a legal opinion from Dalkia International S.A.'s legal counsel addressed to Tolko and Tolko LP in a

form to be settled for the guarantee based on the form attached as Schedule D to this Agreement that is acceptable to Tolko and Tolko LP, acting reasonably, upon which the Escrowed Distributions shall become the property of the Partnership but shall be repayable by the Partnership to Tolko LP in the circumstances contemplated in Section 7.7(3), Tolko LP will (and will cause Tolko to), and the General Partner and the Partnership will, notify the Escrow Agent pursuant to section 4 of the Escrow Agreement that the Escrowed Distributions are to be held for the Partnership instead of Tolko LP, and as general continuing security for the obligation of the Partnership to repay such amounts to Tolko LP in the circumstances contemplated in Section 7.7(3) (the "**Partnership Secured Obligations**") the Partnership hereby grants a security interest to Tolko LP in all of the Escrowed Distributions that are held by the Escrow Agent at any time and from time to time while they the property of the Partnership. Upon default by the Partnership in payment or performance of the Partnership Secured Obligations, Tolko LP may exercise any or all of the remedies available to a secured creditor under applicable Laws.

(3) Tolko LP and the Partnership will execute and deliver to the Escrow Agent from time to time an Escrowed Distributions Release Notice directing the Escrow Agent to disburse the Escrowed Distributions as follows:

(a) if Tolko does not make an indemnity payment to the Partnership as and when required under section 17.2 of the Tolko Fuel Supply Agreement, then, unless the obligation to make the indemnity payment is being disputed in good faith by Tolko, Tolko LP and the Partnership shall (except to the extent the indemnity payment is satisfied by the disbursement of Escrowed Fuel Price Payments pursuant to section 7.7(3)(a) of the Tolko Fuel Supply Agreement) execute and deliver to the Escrow Agent an Escrowed Distributions Release Notice directing the Escrow Agent to release and disburse the Escrowed Distributions to the Partnership in the amount required to make the payment required under section 17.2 of the Tolko Fuel Supply Agreement up to the lesser of (i) the amount of the Escrowed Distributions being held by the Escrow Agent at that time, and (ii) the Maximum Actual Tolko Liability at that time (and if the amount payable by Tolko under section 17.2 of the Tolko Fuel Supply Agreement is payable to any "FuelCo Indemnified Person" (as defined in the Tolko Fuel Supply Agreement) other than the Partnership, the Partnership shall accept payment of such amount on behalf of such "FuelCo Indemnified Person" and payment of such amount to the Partnership shall be full satisfaction of Tolko's obligation to pay such amount under section 17.2 of the Tolko Fuel Supply Agreement);

(b) if the Partnership requires funds to pay a Fuel Supplier Liability that it is not able to fund from cash flow generated by its operations, there are no Tolko Fuel Supplier Liability Agreements in effect for the lesser of (i) 25% of such Fuel Supplier Liability, and (ii) the Maximum Actual Tolko Liability at that time, and the Partnership is offering Class B Units to Tolko LP pursuant to Section 11.3, then unless the Escrowed Distributions are being kept by the Partnership for the issuance of Units to Tolko LP pursuant to Section 7.7(1)(d) Tolko LP and the Partnership shall (except to the extent such amount is being paid pursuant to a Tolko Fuel Supplier Liability Agreement, using Escrowed Fuel Price Payments or using Blocked Distributions) execute and deliver to the Escrow Agent an Escrowed Distributions Release Notice directing the Escrow Agent to release and

disburse the Escrowed Distributions to the Partnership in the amount required to make the payment required up to the lesser of (i) the amount of the Escrowed Distributions being held by the Escrow Agent at that time, and (ii) the Maximum Actual Tolko Liability at that time;

(c) if Tolko LP delivers to the Partnership a Tolko Fuel Supplier Liability Agreement and, if requested by the Partnership, legal opinion pursuant to Section 7.7(1)(a) in substitution of all or a specified amount of any existing Escrowed Distributions, then Tolko LP and the Partnership shall execute and deliver to the Escrow Agent an Escrowed Distributions Release Notice directing the Escrow Agent to release and disburse such amount, minus an amount equal to the then Outstanding Liabilities, from the existing Escrowed Distributions to Tolko LP as contemplated in Section 7.7(1)(b)(i) and, when all such Outstanding Liabilities have been resolved, Tolko LP and the Partnership shall execute and deliver to the Escrow Agent an Escrowed Distributions Release Notice directing the Escrow Agent to release and disburse such amount of Outstanding Liabilities to whichever of Tolko, FuelCo, Dalkia International S.A. or NV HoldCo LP, as the case may be, those amounts are payable to;

(d) if there is a Tolko Fuel Supplier Liability Agreement in effect and:

(i) the Partnership has delivered to Tolko and Tolko LP a "Request for Payment" under and as defined in the Tolko Fuel Supplier Liability Agreement and Tolko and Tolko LP have not made the payment required to the Partnership under the Tolko Fuel Supplier Liability Agreement as and when required by the Tolko Fuel Supplier Liability Agreement, then Tolko LP and the Partnership shall (except to the extent such amount is being paid using Escrowed Fuel Price Payments or Blocked Distributions) execute and deliver to the Escrow Agent an Escrowed Distributions Release Notice directing the Escrow Agent to release and disburse the Escrowed Distributions to the Partnership in the amount required to make the payment required up to the lesser of (i) the amount of the Escrowed Distributions being held by the Escrow Agent at that time, and (ii) the Maximum Actual Tolko Liability at that time; or

(ii) either one or both of Dalkia International S.A. and NV HoldCo LP has delivered to Tolko and Tolko LP a "Demand for Payment" under and as defined in the Tolko Fuel Supplier Liability Agreement and Tolko and Tolko LP have not made the payment required to Dalkia International S.A. or NV HoldCo LP under the Tolko Fuel Supplier Liability Agreement as and when required by the Tolko Fuel Supplier Liability Agreement, then Tolko LP and the Partnership shall (except to the extent such amount is being paid using Escrowed Fuel Price Payments or Blocked Distributions) execute and deliver to the Escrow Agent an Escrowed Distributions Release Notice directing the Escrow Agent to release and disburse the Escrowed Distributions to Dalkia International S.A. or NV HoldCo LP in the amount required to make the payment required up to the lesser of (i) the amount of the Escrowed Distributions being held by the Escrow Agent at that time, and (ii) the Maximum Actual Tolko Liability at that time;

(e) if the amount of the Escrowed Distributions at any time exceeds the amount of the Remaining Potential Tolko Liability at that time, then Tolko LP and the Partnership shall execute and deliver to the Escrow Agent an Escrowed Distributions Release Notice directing the Escrow Agent to release and disburse to Tolko LP the difference between (i) the amount of the Escrowed Distributions being held by the Escrow Agent at that time, minus (ii) the amount of the Remaining Potential Tolko Liability at that time; and

(f) at the end of the initial term of the Tolko Fuel Supply Agreement under section 2.1 of the Tolko Fuel Supply Agreement (regardless of whether or not that term is extended pursuant to section 2.2 of the Tolko Fuel Supply Agreement) Tolko LP and the Partnership shall execute and deliver to the Escrow Agent an Escrowed Distributions Release Notice directing the Escrow Agent to release and disburse:

(i) to Tolko LP: (A) if at that time the amount of the Escrowed Distributions exceeds the amount of the Maximum Actual Tolko Liability, the difference between (i) the amount of the Escrowed Distributions being held by the Escrow Agent, minus (ii) the amount of the Maximum Actual Tolko Liability, plus (B) if after the release contemplated in item (A) above there are any remaining Escrowed Distributions being held by the Escrow Agent, the difference between (i) the amount of those remaining Escrowed Distributions, minus (ii) the sum of (x) the aggregate amount of any outstanding liabilities of Tolko and any liabilities asserted in good faith by the Partnership (including any that are being disputed in good faith by Tolko) under section 17.2 of the Tolko Fuel Supply Agreement at that time, (y) the aggregate amount of any outstanding liabilities of Tolko and Tolko LP and any liabilities asserted in good faith by the Partnership or by Dalkia International S.A. or NV HoldCo LP (including any that are being disputed in good faith by Tolko or Tolko LP) under any outstanding Tolko Fuel Supplier Liability Agreements at that time, and (z) 25% of the aggregate amount of any Fuel Supplier Liability (up to the Maximum Actual Tolko Liability) asserted in good faith by Project Co at that time to the extent not already covered in items (x) and (y) above (the sum of (x), (y) and (z) at any specific time, the then "**Outstanding Liabilities**"); and

(ii) once (x) the aggregate amount of any outstanding liabilities of Tolko and any liabilities asserted in good faith by the Partnership (including any that are being disputed in good faith by Tolko) under section 17.2 of the Tolko Fuel Supply Agreement at that time, (y) the aggregate amount of any outstanding liabilities of Tolko and Tolko LP and any liabilities asserted in good faith by the Partnership or by Dalkia International S.A. or NV HoldCo LP (including any that are being disputed in good faith by Tolko or Tolko LP) under any outstanding Tolko Fuel Supplier Liability Agreements at that time, and (z) 25% of the aggregate amount of any Fuel Supplier Liability (up to the Maximum Actual Tolko Liability) asserted in good faith by Project Co at that time to the extent not already covered in items (x) and (y) above, have been resolved, the remaining amount of the Escrowed Distributions to whichever of Tolko, FuelCo, Dalkia International S.A. or NV HoldCo LP, as the case may be, those amounts are payable to.

**7.8 Provision of Auditor's Certificate.**

(1) As a condition precedent to the delivery by Tolko and Tolko LP of any Tolko Fuel Supplier Liability Agreement and within 120 days following any financial year-end of Tolko in which a Tolko Fuel Supplier Liability Agreement is either provided by Tolko pursuant to Section 7.7(1)(a) or was previously provided and is still in effect, Tolko LP shall provide to the Chief Financial Officer or Treasurer of Dalkia Canada Inc. (and Tolko LP shall be entitled to request confirmation from Dalkia Canada Inc. of the name of Dalkia Canada Inc.'s then current Chief Financial Officer or Treasurer in that respect, which confirmation shall be provided promptly upon request), provided he or she has signed and is bound by a valid and current non-disclosure agreement with Tolko in the form of Tolko's standard non-disclosure agreement, a certificate signed by a duly authorized representative of Tolko's auditors, addressed to the Chief Financial Officer or Treasurer of Dalkia Canada Inc., as the case may be, on the letterhead of such auditors, confirming without qualifications, on the basis of Tolko's annual audited consolidated financial statements for that financial year prepared by such auditors and using Accounting Standards for Private Enterprise as at January 1, 2014, that at the end of such financial year:

(a) Tolko's Debt to Equity Ratio was lower than 1; and

(b) Tolko's Net Assets were greater than $400,000,000.

## Article 8
## DETERMINATION AND ALLOCATION OF NET INCOME AND LOSS

**8.1 Determination of Net Income or Loss.** At the end of each Fiscal Year of the Partnership or for any stub period ending on the date of dissolution of the Partnership, the net profits or losses of the Partnership for such year or period shall be determined by the General Partner in accordance with GAAP, consistently applied.

**8.2 Allocation of Income or Loss for Accounting Purposes.**

(1) The loss of the Partnership for accounting purposes for each Fiscal Year shall be allocated at the end of each Fiscal Year as follows:

(a) First, to the Class C Partners at the end of the Fiscal Year in an amount up to, but not exceeding, the aggregate amount of the Capital Account and Current Account balance at the end of the Fiscal Year in respect of the Class C Units held by the Class C Partner, such loss to be allocated among the Class C Partners in proportion to each Class C Partner's aggregate Capital Account and Current Account balance at the end of the Fiscal Year and once a Class C Partner's aggregate Capital Account and Current Account reaches zero as a consequence of the allocation of a loss, any remaining loss shall be further allocated among only those Class C Partners still having a positive aggregate Capital Account and Current Account Balance; and

(b) Second:

(i) if any Class B Units are issued and outstanding:

a. seventy-five percent (75%) to the Class A Partners at the end of such Fiscal Year in their respective Class A Pro-Rata Portion at the end of the Fiscal Year; and

b. twenty-five percent (25%) to the Class B Partners at the end of such Fiscal Year in their respective Class B Pro-Rata Portion at the end of the Fiscal Year; or

(ii) if no Class B Units are issued and outstanding, to the Class A Partners at the end of such Fiscal Year in their respective Class A Pro-Rata Portion at the end of the Fiscal Year.

(2) The income of the Partnership for accounting purposes for each Fiscal Year shall be allocated at the end of each Fiscal Year as follows:

(a) First, to each of the Class C Partners during the Fiscal Year in an amount up to, but not exceeding, the lesser of:

(i) the amount distributed during the Fiscal Year to such Class C Partner with respect to its Class C Units pursuant to Section 7.1; and

(ii) the amount by which the losses for accounting purposes previously allocated to the Class C Partners exceeds the amount of income for accounting purposes previously allocated to the Class C Partners; and

(b) Second:

(i) if any Class B Units are issued and outstanding:

a. seventy-five percent (75%) to the Class A Partners at the end of such Fiscal Year in their respective Class A Pro-Rata Portion at the end of the Fiscal Year; and

b. twenty-five percent (25%) to the Class B Partners at the end of such Fiscal Year in their respective Class B Pro-Rata Portion at the end of the Fiscal Year; or

(ii) if no Class B Units are issued and outstanding, to the Class A Partners at the end of such Fiscal Year in their respective Class A Pro-Rata Portion at the end of the Fiscal Year.

**8.3 Allocation of Taxable Income or Loss.**

(1) The Taxable Loss of the Partnership for each Fiscal Year or for any stub period ending on the date of dissolution of the Partnership shall be allocated as follows:

(a) First, to the Class C Partners at the end of the Fiscal Year or stub period in an amount up to, but not exceeding, the Class C Net Capital at the end of the Fiscal Year or stub period in respect of the Class C Units held by the Class C Partner with such Taxable Loss allocated among the Class C Partners in proportion to each Class C Partner's Class C Net Capital at the end of the Fiscal Year or stub period and once Class C Partner's Class C Net Capital reaches zero as a consequence of the allocation of a Taxable Loss for the Fiscal Year or stub period, the remaining Taxable Loss shall be allocated among only those Class C Partners still having a positive balance of Class C Net Capital; and

(b) Second:

(i) if any Class B Units are issued and outstanding:

a. seventy-five percent (75%) to the Class A Partners at the end of such Fiscal Year or stub period in their respective Class A Pro-Rata Portion at the end of the Fiscal Year or stub period; and

b. twenty-five percent (25%) to the Class B Partners at the end of such Fiscal Year or stub period in their respective Class B Pro-Rata Portion at the end of the Fiscal Year or stub period; or

(ii) if no Class B Units are issued and outstanding, to the Class A Partners at the end of such Fiscal Year or stub period in their respective Class A Pro-Rata Portion at the end of the Fiscal Year or stub period.

(2) The Taxable Income of the Partnership for each Fiscal Year or for any stub period ending on the date of dissolution of the Partnership shall be allocated as follows:

(a) First, to each of the Class C Partners during the Fiscal Year or stub period in an amount up to, but not exceeding, the lesser of:

(i) the amount distributed during the Fiscal Year or stub period to such Class C Partner with respect to its Class C Units pursuant to Section 7.1; and

(ii) the amount by which the Taxable Losses previously allocated to the Class C Partner exceeds the amount of Taxable Income previously allocated to the Class C Partner; and

(b) Second:

(i) if any Class B Units are issued and outstanding:

a. seventy-five percent (75%) to the Class A Partners at the end of such Fiscal Year or stub period in their respective Class A Pro-Rata Portion at the end of the Fiscal Year or stub period; and

b. twenty-five percent (25%) to the Class B Partners at the end of such Fiscal Year or stub period in their respective Class B Pro-Rata Portion at the end of the Fiscal Year or stub period; or

(ii) if no Class B Units are issued and outstanding, to the Class A Partners at the end of such Fiscal Year or stub period in their respective Class A Pro-Rata Portion at the end of the Fiscal Year or stub period.

**8.4 Computation of Taxable Income or Loss.** The General Partner may, with the approval by Special Resolution of the Limited Partners, in computing the Taxable Income or Loss of the Partnership, adopt a different method of accounting than required by Section 8.1, adopt different treatments of particular items and make and revoke such elections on behalf of the Partnership and the Partners as the General Partner deems to be appropriate in order to reflect the terms of this Agreement.

**8.5 Capital Cost Allowance.** In connection with the determination of the Taxable Income or Loss of the Partnership for each Fiscal Year, unless otherwise agreed by Special Resolution of the Limited Partners, the General Partner shall deduct the maximum amount of capital cost allowance and other discretionary deductions as may be available to the Partnership for that period under applicable income tax Laws.

**8.6 Tax Returns.** Each Partner shall prepare and file such documents as may be required to be prepared and filed under the Income Tax Act and any similar provincial statute and shall include in its computation of income the income or loss of the Partnership for tax purposes as may be determined and allocated to it pursuant to this Article 8.

## Article 9
## PARTNERSHIP MEETINGS

**9.1 Quorum.** At any meeting of the Partnership a quorum shall consist of Partners representing more than 50% of the Class A Units and, if any Class B Units are issued and outstanding, more than 50% of the Class B Units in person (by authorized representative in the case of a Partner that is not an individual) or represented by proxy. If a quorum is not present at a meeting, such meeting shall be adjourned until a date no sooner than the fifth ($5^{th}$) Business Day and no later than the tenth ($10^{th}$) Business Day following the date of the initial meeting. Notices of a meeting shall be sent by the General Partner or by Partners representing more than 50% of the Class A Units or, if any Class B Units are issued and outstanding, more than 50% of the Class B Units at least 5 Business Days before the meeting, together with an agenda of the meeting.

**9.2 Powers Exercisable by Special Resolution.**

(1) The Partners who are entitled to vote may by Special Resolution, and not otherwise:

(a) dismiss the General Partner on written notice delivered not later than fourteen (14) days following the occurrence of any of the events described in Article 13, and admit a new General Partner concurrently therewith;

(b) admit a new General Partner to the Partnership, provided that there shall be only one General Partner of the Partnership at all times;

(c) waive any default on the part of the General Partner on such terms as they may determine and release the General Partner from any claims in respect thereof;

(d) continue the Partnership, if the Partnership is terminated by operation of law; and

(e) amend, modify, alter or repeal any Special Resolution.

## Article 10
## OPERATIONAL MATTERS

**10.1 Fiscal Year.** The financial year and fiscal year of the Partnership shall end on December 31 of each year.

**10.2 Right of Inspection.** Each Partner and its accountants and advisors shall, during the regular office hours of the Partnership, upon reasonable notice to the Partnership and in a manner that does not interfere with the Partnership's normal operation of its business, have access to the books and records of the Partnership, be entitled to make copies from such books and records, and be entitled to examine into the

state and progress of the Partnership business and the management of the Partnership business, at its sole cost and expense.

**10.3 Budget.** At least four (4) weeks before the beginning of each Fiscal Year, the General Partner shall send to each Partner a profit forecast, annual budget and business plan, providing, among other things, a detailed breakdown of projected cash flow, capital expenditures and income of the Partnership.

**10.4 Information**

(1) The General Partner will provide to each Partner on an ongoing basis information on the management of the Partnership including, without limitation:

(a) audited consolidated accounts for each financial year and quarterly management accounts and reports;

(b) the budget referred to in Section 10.3 for the forthcoming Fiscal Year;

(c) notice of any material events;

(d) copies of all material communications made pursuant to or in connection with the FuelCo/Project Co Fuel Supply Agreement; and

(e) all information required to file a tax return of a Partner under the Income Tax Act or a similar provincial statute within the time prescribed under the Laws, and in any case, within 60 days after the end of a Fiscal Year of the Partnership.

**10.5 Partner Loans and Guarantees.** Except as otherwise agreed by the Partners, a Partner shall not be required to loan any monies to the Partnership nor to guarantee any obligations of the Partnership.

**10.6 Additional Funds**

(1) If additional funds are required by the Partnership for its continued operation and for the carrying on of the Business, which funds are not required to pay a Fuel Supplier Liability, the General Partner shall be entitled to request by written notice provided to each Limited Partners that the Limited Partners either subscribe for Class C Units and/or advance to the Partnership by way of a loan in either case up to the total amount of the additional funds required and in the following proportion: (i) if any Class B Units are issued and outstanding, seventy-five percent (75%) of the total amount of the required additional funds will be requested from the Class A Partners, in their Class A Pro-Rata Portion, and twenty-five percent (25%) of the total amount of the required additional funds will be requested from the Class B Partners, in their Class B Pro-Rata Portion or (ii) if no Class B Units are issued and outstanding, the total amount of the required additional funds will be requested from the Class A Partners, in their Class A Pro-Rata Portion. The Limited Partners shall not have any obligation to subscribe for Class C Units or advance any amount to the Partnership as a loan pursuant to this Section 10.6(1). If any Limited Partner does not confirm its decision to subscribe for Class C Units or advance a loan to the Partnership in its applicable proportion within 10 Business Days of the General Partner's notice, the other Limited Partners may, at their option, subscribe for additional Class C Units or make an additional loan to the Partnership for the total amount not subscribed for or advanced to the Partnership by the other Limited Partners with each such Limited Partner entitled (but not obligated) to subscribe for or advance an additional minimum amount in the proportion of such additional amount equal to the amount the Limited Partner initially agreed to subscribe for or contribute relative to the amount all the Limited Partners initially agreed to subscribe for or contribute without taking into account such additional amount.

(2) Any loans advanced to the Partnership pursuant to Section 10.6(1) shall bear interest at an annual rate equal to the Prime Rate plus 5% per annum and shall be compounded on each anniversary date of the date on which such loan was made, provided that the interest rate shall not exceed the maximum allowable interest rate under applicable Law. Loans shall be repayable by the Partnership to the relevant Limited Partners in priority over any distribution on any issued and outstanding Units.

## Article 11
## ISSUANCE AND DISPOSITION OF PARTNERSHIP INTEREST

### 11.1 Pre-Emptive Rights for Issuance of Securities

(1) The Partnership will only issue Securities if additional capital is required by the Partnership for its continued operations to carry on the Business, including without limitation, if the Partnership requires funds to make a payment required from the Partnership under the FuelCo/Project Co Fuel Supply Agreement as provided in Section 11.3, and then only in accordance with this Section 11.1.

(2) If the Partnership desires to issue any Securities as permitted by this Section 11.1, then the Partnership shall first deliver to all Limited Partners holding Class A Units (the "**Class A Partners**") a written notice setting out a description of the Securities, the proposed price (which shall be equal to the Fair Market Value of the Securities or, in the case where the Securities are Class A Units, the greater of $1.00 per Class A Unit and the Fair Market Value per Class A Unit, and which price shall be payable in full in cash on the date of the issuance) and the proposed terms and conditions of the issuance and offering, to each Class A Partner the right to subscribe for that number of Securities in the proportion that the number of the Class A Units owned by the Class A Partner is to the number of Class A Units owned by all of the Class A Partners (the "**Class A Pro-Rata Portion**"). Where the calculation of the Class A Pro-Rata Portion of Securities results in a fraction, then such Class A Partner's Class A Pro-Rata Portion will be increased or decreased to the nearest whole number. No Securities shall be issued to any Person other than an existing Limited Partner until such Person has agreed in writing to be bound by the provisions contained in this Agreement.

(3) Each Class A Partner shall notify the Partnership of the number of Securities for which it elects to subscribe, without any obligation to subscribe for any. If all of the Securities are not subscribed for, the Partnership shall notify each Class A Partner which has subscribed for its maximum number of Securities of the number of Securities remaining unsubscribed and such Class A Partner shall be entitled to purchase all or part of such unsubscribed Securities and shall notify the Partnership of the number of such unsubscribed Securities for which it elects to subscribe. If more than one Class A Partner elects to subscribe for any of the unsubscribed Securities, each Class A Partner will be entitled to subscribe for its Class A Pro-Rata Portion of the unsubscribed Securities but the Class A Pro-Rata Portion will be calculated as the proportion that the number of Class A Units owned by the Class A Partner is to the total number of Class A Units owned by all of the Class A Partners who elect to subscribe for any of the unsubscribed Securities. This process shall be repeated until all the Securities are subscribed for or all of the Class A Partners have decided not to subscribe for any more Securities. If any of the Securities are not subscribed for by Class A Partners, those Securities may be issued by the Partnership to any other Person provided such Person has agreed in writing to be bound by the provisions contained in this Agreement.

(4) Failure of a Class A Partner to reply to the notice of the Partnership given pursuant to Section 11.1(1) within 15 days of such notice or to any notice given pursuant to Section 11.1(3) within five (5) days of the notice shall be construed as a decision not to subscribe for the Securities referred to in the applicable notice under this Section 11.1.

(5) The issuance and sale of the Securities pursuant to this Section 11.1 shall be completed at the registered office of the Partnership within thirty (30) days after the Class A Partners have agreed to subscribe for all or part of the Securities to be issued and the price for the Securities shall be paid in accordance with the terms of the notice given pursuant to Section 11.1(1) on the completion date against delivery of a certificate or certificates representing the Securities registered in the name of each Class A Partner who subscribed for Securities hereunder.

**11.2 Pre-Emptive Rights for Issuance of Class B Units**

(1) The Partnership will only issue Class B Units to existing Class B Partners and then only as provided in Section 11.3 if the Partnership requires funds to pay a Fuel Supplier Liability, and then only in accordance with this Section 11.2.

(2) If the Partnership desires to issue any Class B Units as permitted by Section 11.2(1), then the Partnership shall first deliver to all Class B Partners a written notice setting out the number of Class B Units to be issued, the proposed price (which shall be equal to the greater of $1.00 per Class B Unit and the Fair Market Value per Class B Unit, and which price shall be payable in full in cash on the date of the issuance) and the proposed date of issuance and offering to each Class B Partner the right to subscribe for that number of Class B Units in the proportion that the number of the Class B Units owned by the Class B Partner is to the number of Class B Units owned by all of the Class B Partners (the "**Class B Pro-Rata Portion**"). Where the calculation of the Class B Pro-Rata Portion of Class B Units results in a fraction, then such Class B Partner's Class B Pro-Rata Portion will be increased or decreased to the nearest whole number. No Class B Units shall be issued to any Person other than an existing Class B Partner.

(3) Each Class B Partner shall notify the Partnership of the number of Class B Units for which it elects to subscribe, without any obligation to subscribe for any. If all of the Class B Units are not subscribed for, the Partnership shall notify each Class B Partner which has subscribed for its maximum number of Class B Units of the number of Class B Units remaining unsubscribed and such Class B Partner shall be entitled to purchase all or part of such unsubscribed Class B Units and shall notify the Partnership of the number of such unsubscribed Class B Units for which it elects to subscribe. If more than one Class B Partner elects to subscribe for any of the unsubscribed Class B Units, each Class B Partner will be entitled to subscribe for its Class B Pro-Rata Portion of the unsubscribed Class B Units but the Class B Pro-Rata Portion will be calculated as the proportion that the number of Class B Units owned by the Class B Partner is to the total number of Class B Units owned by all of the Class B Partners who elect to subscribe for any of the unsubscribed Class B Units. This process shall be repeated until all the Class B Units are subscribed for or all of the Class B Partners have decided not to subscribe for any more Class B Units. If any Class B Units are not subscribed for by Class B Partners, those Class B Units shall not be issued by the Partnership.

(4) Failure of a Class B Partner to reply to the notice of the Partnership given pursuant to Section 11.2(2) within 15 days of such notice or to any notice given pursuant to Section 11.2(2) within five (5) days of the notice shall be construed as a decision not to subscribe for the Class B Units referred to in the applicable notice under this Section 11.2.

(5) The issuance and sale of the Class B Units pursuant to this Section 11.2 shall be completed at the registered office of the Partnership within thirty (30) days after the Class B Partners have agreed to subscribe for all or part of the Class B Units to be issued and the price for the Class B shall be paid in accordance with the terms of the notice given pursuant to Section 11.2(2) on the completion date against delivery of a certificate or certificates representing the Class B Units registered in the name of each Class B Partner who subscribed for Class B Units hereunder.

(6) Upon and at any time after the end of the initial term of the Tolko Fuel Supply Agreement under section 2.1 of the Tolko Fuel Supply Agreement (regardless of whether or not the term is extended pursuant to section 2.2 of the Tolko Fuel Supply Agreement), to the extent not prohibited pursuant to applicable Laws the Partnership shall, upon request of Tolko LP, redeem and cancel any and all outstanding Units held by Tolko LP in consideration for the payment by the Partnership to Tolko LP of the amount of all Undistributed Amounts for those Units at that time. For purposes of Article 8 and determining the amount of all Undistributed Amounts for those Units in the Fiscal Year in which the redemption occurs, Tolko LP will be considered to own the redeemed Units at the end of the Fiscal Year in which the Units are redeemed and the Taxable Income or Taxable Loss allocated to Tolko LP in respect of such Units for the period of the Fiscal Year in which they were owned by Tolko LP prior to the redemption will be reduced to equal the amount otherwise allocable pursuant to Article 8 multiplied by the number of days in the Fiscal Year that Tolko LP was a Partner divided by the total number of days in the Fiscal Year. If Tolko or Tolko LP is in breach of any obligation to make a payment under any Tolko Fuel Supplier Liability Agreement or if Tolko is in breach of any obligation to indemnify and save harmless the Partnership under section 17.2(1) of the Tolko Fuel Supply Agreement, then, to the extent the Partnership does not already have any Blocked Distributions for the amount of the obligations, the Partnership shall be entitled to set-off the amount of the obligations that is payable by Tolko or Tolko LP against the amount payable by the Partnership to Tolko LP for the Units. The Units shall be redeemed and cancelled five (5) days after the date of the request by Tolko LP, and the amount payable by the Partnership to Tolko LP for the redemption of the Units will be payable by the Partnership to Tolko LP as and when distributions are made by the Partnership under Section 7.1 as follows:

(a) if any Class C Units are outstanding on the distribution date, a portion of the amounts then available for distribution on such distribution date equal to the proportion that the outstanding Undistributed Amounts represent relative to the sum of such outstanding Undistributed Amounts and the number of Class C Units outstanding, shall be used to pay that amount of the redemption price of the Units (and the remainder shall be distributed on the outstanding Units in accordance with Section 7.1); and

(b) if no Class C Units are outstanding on the distribution date, the amounts then available for distribution on such distribution date shall be used entirely to pay the redemption price of the Units until the outstanding redemption price has been paid in full.

From the date of the redemption of the Units held by Tolko LP until payment in full of such redemption price, the Parties shall not amend the terms and conditions of Article 7 in a manner that would negatively affect the timing of payment of any outstanding redemption price payable to Tolko LP for the redemption. In addition, notwithstanding any other provision in this Agreement, if any of the Units held by Tolko LP that are redeemed are Class C Units in respect of which any Tax Losses have been allocated to Tolko LP prior to the redemption of those Class C Units and the redemption price of the Class C Units is not paid in full on the date of the redemption, then Tolko LP will be allocated Taxable Income up to the amount of the Tax Losses previously allocated to it in respect of those Class C Units as Tolko LP receives payment of the redemption price for those Class C Units as permitted by section 96 of the *Income Tax Act* (Canada) even though Tolko LP is no longer a partner in the Partnership at the time the Taxable Income is earned.

(7) For as long as any Class B Units are issued and outstanding the Partnership will not redeem or otherwise purchase any issued and outstanding Units except as required by Section 5.2(4) or Section 11.2(6) unless an equal proportion of each class of issued and outstanding Units relative to the total number of issued and outstanding number of Units of such class are redeemed simultaneously.

**11.3 Funds Required for Payment of a Fuel Supplier Liability**

(1) If the General Partner, acting reasonably and in good faith, believes that the Partnership requires funds to pay a Fuel Supplier Liability that it is not able to fund from cash flow generated by its operations, the Partnership will offer:

(a) Class A Units to Class A Partners pursuant to Section 11.1 in the number of Class A Units required based on the greater of $1.00 per Class A Unit and the Fair Market Value of the Class A Units to raise seventy-five percent (75%) of the amount of the Fuel Supplier Liability that it is not able to fund from cash flow generated by its operations; and

(b) Class B Units to Class B Partners pursuant to Section 11.2 in the number of Class B Units required based on the greater of $1.00 per Class B Unit and the Fair Market Value of the Class B Units to raise twenty-five percent (25%) of the amount of the Fuel Supplier Liability that it is not able to fund from cash flow generated by its operations, provided that the Partnership shall not offer or issue any Class B Units at any time under this Section 11.3(1)(b) if the amount for which the Class B Units are offered or issued will exceed the Maximum Actual Tolko Liability at such time.

(2) Each:

(a) Class A Partner will, to the extent that the Class A Partner determines it has the funds available to do so, subscribe for Class A Units in an amount equal to its Class A Pro-Rata Portion of the Class A Units offered to the Class A Partners; and

(b) each Class B Partner will, to the extent that the Class B Partner determines it has the funds available to do so or, in the case of Tolko LP, to the extent that there are Blocked Distributions under Section 7.3, Escrowed Fuel Price Payments under section 7.7(1)(c) of the Tolko Fuel Supply Agreement or Escrowed Distributions under Section 7.7(1)(c), subscribe for Class B Units in an amount equal to its Class B Pro-Rata Portion of the Class B Units offered to the Class B Partners up to, in the case of Tolko LP, the Maximum Actual Tolko Liability at that time. If there is a combination of Escrowed Fuel Price Payments under section 7.7(1)(c) of the Tolko Fuel Supply Agreement, Blocked Distributions under Section 7.3 and Escrowed Distributions under Section 7.7(1)(c), the Escrowed Fuel Price Payments will be used to subscribe for Class B Units pursuant to section 7.7(3) of the Tolko Fuel Supply Agreement prior to the Blocked Distributions being used to subscribe for Class B Units pursuant to Section 7.7(3) and the Blocked Distributions will be used to subscribe for Class B Units pursuant to Section 7.3(a) prior to the Escrowed Distributions being used to subscribe for Class B Units pursuant to Section 7.7(3).

(3) If the funds received by the Partnership from:

(a) a Class A Partner for the Class A Units offered to the Class A Partner that are actually subscribed for by the Class A Partner are less than the Class A Partner's Class A Pro-Rata Portion of seventy-five percent (75%) of the amount required by the Partnership for the Fuel Supplier Liability, each Class B Partner may subscribe for Class C Units at $1.00 per Class C Unit in accordance with Section 11.4 for an

aggregate amount equal to the Class B Partner's Class B Pro-Rata Portion of the difference between (i) seventy-five percent (75%) of the amount required by the Partnership to pay the Fuel Supplier Liability, minus (ii) the aggregate amount paid by Class A Partners as the subscription price for Class A Units pursuant to Section 11.3(2)(a); or

(b) a Class B Partner for the Class B Units offered to the Class B Partner that are actually subscribed for by the Class B Partner are less than the Class B Partner's Class B Pro-Rata Portion of twenty-five percent (25%) of the amount required by the Partnership for the Fuel Supplier Liability (even if the reason is because twenty-five percent (25%) of the amount required by the Partnership for the Fuel Supplier Liability exceeds the Maximum Actual Tolko Liability) or if the Partnership is not entitled to issue Class B Units to the Class B Partners pursuant to Section 11.3(1)(b) because the amount for which the Class B Units would be offered or issued would exceed the Maximum Actual Tolko Liability at such time, each Class A Partner may subscribe for Class C Units at $1.00 per Class C Unit in accordance with Section 11.4 for an aggregate amount equal to the Class A Partner's Class A Pro-Rata Portion of the difference between (i) twenty-five percent (25%) of the amount required by the Partnership to pay the Fuel Supplier Liability, minus (ii) the aggregate amount paid by Class B Partners as the subscription price for Class B Units pursuant to Section 11.3(3)(b), if any.

(4) If at any time and from time to time after Units have been issued pursuant to this Section 11.3 at a time when twenty-five percent (25%) of the amount required by the Partnership for the Fuel Supplier Liability exceeds the Maximum Actual Tolko Liability and as a result there is any Outstanding Potential Tolko Portion of a Fuel Supplier Liability and there is a subsequent Increase in Tolko's Actual Liability, the Partnership will, unless Dalkia International S.A. or NV HoldCo LP determines, acting reasonably, that there is then a Fuel Supplier Credit Risk, offer additional Class B Units to the Class B Partners as provided in Section 11.3(1)(b), each Class B Partner will be entitled to subscribe for the Class B Units as provided in Section 11.3(2)(b) and the funds received by the Partnership from a Class B Partner for the Class B Units offered to the Class B Partner that are actually subscribed for by the Class B Partner (whether using Escrowed Fuel Price Payments, Blocked Distributions, Escrowed Distributions, paid pursuant to a Tolko Fuel Supplier Liability Agreement or otherwise) will be distributed in accordance with Section 7.1.

(5) If any Units have been issued pursuant to Section 11.3 (including Class C Units as provided in Section 11.3(3)) to pay a Fuel Supplier Liability that was only a potential obligation or liability and such potential obligation or liability does not materialize within the time that the General Partner, acting reasonably and in good faith, believed that it would, the subscription price paid in respect thereto that is not needed for an actual Fuel Supplier Liability shall be returned by the Partnership to the Partner from whom it was received in accordance with the following:

(a) first, if any amount of such subscription price was paid for any Class C Units, such amount will be returned to the Partner that paid such amount; and

(b) second, once any amount of such subscription price that was paid for any Class C Units has been returned to the Partners that paid such amounts, any amount of such subscription price paid for any other Units will be returned to the Partner that paid such amount.

If the funds were taken from: (i) Blocked Distributions pursuant to Section 7.3(a), the amount shall be credited back to and retained by the Partnership as Blocked Distributions under Section 7.3, (ii) Escrowed Fuel Price Payments pursuant to section 7.7(3) of the Tolko Fuel Supply Agreement, the amount shall be returned back to the Escrow Agent and held as Escrowed Fuel Price Payments pursuant to section 7.7(3) of the Tolko Fuel Supply Agreement, or (iii) Escrowed Distributions pursuant to Section 7.7(3), the amount shall be returned back to the Escrow Agent and held as Escrowed Distributions under the Escrow Agreement, in any such case within 15 days from the end of the time period that the General Partner, acting reasonably and in good faith, believed such potential obligation or liability would materialize.

**11.4 Class C Units**

(1) The Partnership will only issue Class C Units as provided in Section 10.6(1) or Section 11.3(3).

(2) If the Partnership desires to issue any Class C Units as permitted by Section 11.4(1), then the Partnership shall first deliver to all Class A Partners and Class B Partners a written notice setting out the number of Class C Units to be issued, the proposed price (which shall be equal to the amount of $1 per Class C Unit and which shall be payable in full in cash on the date of the issuance) and the proposed date of issuance and offering to each:

(a) Class A Partner the right to subscribe for its Class A Pro-Rata Portion of:

(i) in the case of Section 10.6(1), seventy-five percent (75%) of the Class C Units; and

(ii) in the case of Section 11.3(3), the Class C Units referred to in Section 11.3(3)(b), if applicable;

(b) Class B Partner the right to subscribe for its Class B Pro-Rata Portion of:

(i) in the case of Section 10.6(1), twenty-five percent (25%) of the Class C Units; and

(ii) in the case of Section 11.3(3), the Class C Units referred to in Section 11.3(3)(a), if applicable.

Where the calculation of the Class A Pro-Rata Portion or Class B Pro-Rata Portion of Class C Units results in a fraction, then such Limited Partner's Class A Pro-Rata Portion or Class B Pro-Rata Portion, as the case may be, will be increased or decreased to the nearest whole number. No Class C Units shall be issued to any Person other than an existing Class A Partner or Class B Partner.

(3) Each Class A Partner and Class B Partner to whom an offer is made under Section 11.4(2) shall notify the Partnership of the number of Class C Units for which it elects to subscribe, without any obligation to subscribe for any. If all of the Class C Units are not subscribed for, the Partnership shall notify each Limited Partner which has subscribed for its maximum number of Class C Units of the number of Class C Units remaining unsubscribed and such Limited Partner shall be entitled to purchase all or part of such unsubscribed Class C Units and shall notify the Partnership of the number of such unsubscribed Class C Units for which it elects to subscribe. If more than one Limited Partner elects to subscribe for any of the unsubscribed Class C Units, each such Limited Partner that is a:

(a) Class A Partner will be entitled to subscribe for its Class A Pro-Rata Portion of:

(i) in the case of Section 10.6(1):

a. seventy-five percent (75%) of the unsubscribed Class C Units if any Limited Partner that elects to subscribe for any of the unsubscribed Class C Units is a Class B Partner; or

b. the unsubscribed Class C Units if none of the Limited Partners that elects to subscribe for any of the unsubscribed Class C Units is a Class B Partner;

(ii) in the case of Section 11.3(3), the unsubscribed Class C Units referred to in Section 11.3(3)(b), if applicable;

but the Class A Pro-Rata Portion will be calculated as the proportion that the number of Class A Units owned by the Class A Partner is to the total number of Class A Units owned by all of the Class A Partners who elect to subscribe for any of the unsubscribed Class C Units; or

(b) Class B Partner will be entitled to subscribe for its Class B Pro-Rata Portion of:

(i) in the case of Section 10.6(1):

a. twenty-five percent (25%) of the unsubscribed Class C Units if any Limited Partner that elects to subscribe for any of the unsubscribed Class C Units is a Class A Partner; or

b. the unsubscribed Class C Units if none of the Limited Partners that elects to subscribe for any of the unsubscribed Class C Units is a Class A Partner;

(ii) in the case of Section 11.3(3), the unsubscribed Class C Units referred to in Section 11.3(3)(a), if applicable;

but the Class B Pro-Rata Portion will be calculated as the proportion that the number of Class B Units owned by the Class B Partner is to the total number of Class B Units owned by all of the Class B Partners who elect to subscribe for any of the unsubscribed Class C Units.

This process shall be repeated until all the Class C Units are subscribed for or all of the Class A Partners and Class B Partners to whom an offer is made under Section 11.4(2) have decided not to subscribe for any more Class C Units. If any Class C Units are not subscribed for by Class A Partners or Class B Partners to whom an offer is made under Section 11.4(2), those Class C Units shall not be issued by the Partnership.

(4) Failure of a Limited Partner to reply to the notice of the Partnership given pursuant to Section 11.4(2) within 15 days of such notice or to any notice given pursuant to Section 11.4(3) within five (5) days of the notice shall be construed as a decision not to subscribe for the Class C Units referred to in the applicable notice under this Section 11.4.

(5) The issuance and sale of the Class C Units pursuant to this Section 11.4 shall be completed at the registered office of the Partnership within thirty (30) days after the process under Section 11.4(2) and Section 11.4(3) has been completed and the Class A Partners and Class B Partners have agreed to subscribe for all or part of the Class C Units to be issued and the price for the Class C shall be paid in accordance

with the terms of the notice given pursuant to Section 11.4(2) on the completion date against delivery of a certificate or certificates representing the Class C Units registered in the name of each Limited Partner who subscribed for Class C Units hereunder.

**11.5 Restriction on Transfers.** Except as otherwise permitted pursuant to the provisions of Section 11.6, Section 11.7, Section 11.8 or Section 11.9 or, in the case of the General Partner only, Section 13.1 or Section 13.5, no Party shall Transfer, directly or indirectly, its Partnership Interest, or any part thereof, or any right, title or interest therein. A Transfer of any Partnership Interest in violation of this Agreement shall not be valid and the General Partner shall not register, nor permit any transfer agent to register, any such Transfer on the securities register of the Partnership.

**11.6 Lock-In Period.** Except in the case of a Transfer pursuant to this Section 11.6, a Transfer to a Permitted Transferee in accordance with Section 11.7, or a Transfer pursuant to Section 11.8, during the term of the FuelCo/Project Co Fuel Supply Agreement, Tolko LP (and its Permitted Transferees) shall not Transfer, directly or indirectly, all or any portion of its Partnership Interest if such Transfer would result in Tolko LP and its Permitted Transferees holding, directly or indirectly, less than 25% of the total aggregate number of issued and outstanding Class A Units and Class B Units. Except in the case of a Transfer pursuant to this Section 11.6, a Transfer to a Permitted Transferee in accordance with Section 11.7 or a Transfer pursuant to Section 11.8, during the term of the FuelCo/Project Co Fuel Supply Agreement and if any Class B Units are issued and outstanding, NV Holdco LP (and its Permitted Transferees) shall not Transfer, directly or indirectly, all or any portion of its Partnership Interest if such Transfer would result in NV Holdco LP and its Permitted Transferees holding, directly or indirectly, fifty-percent (50%) or less of the total aggregate issued and outstanding Class A Units and Class B Units. Notwithstanding the foregoing, subject to Section 11.10 and Section 11.11 if any Class B Units are issued and outstanding:

(a) Tolko LP shall be entitled to Transfer a portion of its Units to an Other Fuel Supplier Subcontractor with the prior written consent of NV HoldCo LP, such consent not to be unreasonably withheld or delayed; and

(b) NV HoldCo LP shall be entitled to Transfer a portion of its Units to an Other Fuel Supplier Subcontractor with the prior written consent of Tolko LP (provided NV HoldCo LP and its Permitted Transferee continue to own more than fifty percent (50%) of the total aggregate issued and outstanding Class A Units and Class B Units), such consent not to be unreasonably withheld or delayed.

**11.7 Permitted Transferees.** A Limited Partner (a "**Transferor**") shall be entitled, upon prior written notice to the other Partners, to Transfer all or a part of its Partnership Interest, to any Permitted Transferee of such Transferor, provided that:

(a) the Permitted Transferee has executed prior to such Transfer a counterpart to this Agreement and agreed to be bound by or is otherwise added as a party to the Escrow Agreement or enters into a new Escrow Agreement regarding the Escrowed Distributions to be paid to and held by the Escrow Agent from and after the assignment of the Transferor's Partnership Interest, upon which the Permitted Transferee shall have all of the rights and obligations of the Transferor hereunder and thereunder with respect to such Partnership Interest; and

(b) the Permitted Transferee and the Transferor have agreed, in form and terms satisfactory to the other Partners, acting reasonably, that as long as the Permitted Transferee holds such Partnership Interest, the Permitted Transferee shall remain a wholly-owned Affiliate of the Transferor, except where the Permitted Transferee

is subsequently wound-up or dissolved into the Transferor (and in such a case the Transfer of the Partnership Interest by the Permitted Transferee back to the Transferor as a result of the winding-up or dissolution of the Permitted Transferee will also be permitted without consent).

**11.8 Bankruptcy or Material Breach**

(1) In the event that any of the following events (an "**Event of Change**") should occur:

(a) a Limited Partner commits an act of bankruptcy, becomes insolvent, goes into liquidation (other than as a result of an internal reorganization or voluntary winding up or dissolution), makes a general assignment for the benefit of its creditors or otherwise acknowledges its insolvency, or a bankruptcy petition is filed or presented against a Limited Partner and is not contested in good faith and discharged within thirty days after it is filed or presented, or a receiver or similar officer is appointed for a Limited Partner or for any substantial part of its property;

(b) in respect of NV HoldCo LP only, the failure by Dalkia International S.A. and NV HoldCo LP to pay any amount payable by Dalkia International S.A. and NV HoldCo LP when due under the Dalkia Fuel Supply Guarantee unless such failure is cured within 10 days of the giving of a written notice by a non-defaulting Limited Partner requiring such rectification;

(c) in respect of Tolko LP only, the failure by Tolko to pay any amount payable by Tolko when due under any Tolko Fuel Supplier Liability Agreement unless such failure is cured within 10 days of the giving of a written notice by a non-defaulting Limited Partner requiring such rectification;

(d) in respect of Tolko LP only, the occurrence of an "Event of Default" (pursuant to the meaning ascribed to such term in the Tolko Fuel Supply Agreement) by Tolko under the Tolko Fuel Supply Agreement;

(e) a change of Control of a Limited Partner, unless approved by the other Partners; or

(f) a Limited Partner permits to be done or omits to do any act in material breach of this Agreement and fails to rectify the same within thirty (30) days after the giving of a written notice by a non-defaulting Limited Partner requiring such rectification;

then the Limited Partner subject to the Event of Change and its Affiliates (the "**Defaulting Partner**"):

(g) shall be deemed to have offered to sell all of their Class A Units and Class B Units (the "**Default Class A and B Units**") to each other Limited Partner (the "**Non-Defaulting Partner(s)**") in the proportion that the number of Class A Units and Class B Units owned by each Non-Defaulting Partner is to the number of Class A Units and Class B Units owned by all Non-Defaulting Partners (the "**Proportionate Share**"); and

(h) shall be deemed to have offered to sell all of their Class C Units (the "**Default Class C Units**") to the Non-Defaulting Partners, in their Proportionate Share.

(2) If any Partner becomes aware of an Event of Change that occurs for any other Partner, it will notify the other Partners. Within one hundred twenty (120) days after the Non-Defaulting Partner(s) becomes aware of the Event of Change (the "**Default Period**"), a notice accepting its Proportionate Share of the Default Class A and B Units and/or Default Class C Units may be given by Non-Defaulting Partner(s) to the Defaulting Partner and the other Non-Defaulting Partners. If a Non-Defaulting Partner has not accepted all of its Proportionate Share of the Default Class A and B Units and/or Default Class C Units, the other Non-Defaulting Partner(s) shall be entitled to purchase all Default Class A and B Units and/or Default Class C Units that have not been accepted by giving notice to that effect to the Defaulting Partner within 10 days from the expiry of the 120 day-period referred to above. If more than one Non-Defaulting Partner gives such a notice, each Non-Defaulting Partner will be entitled to purchase the Proportionate Share of the Default Class A and B Units and/or Default Class C Units but the Proportionate Share will be calculated as the proportion that the number of Class A Units and Class B Units owned by the Non-Defaulting Partner is to the total number of Class A Units and Class B Units owned by all of the Non-Defaulting Partners who give such a notice. This process shall be repeated until all the Default Class A and B Units and Default Class C Units are being purchased or all of the Non-Defaulting Partners have decided not to purchase any more Default Class A and B Units or Default Class C Units. On the day which is the later of:

(a) thirty (30) days after the delivery of the last notice of acceptance delivered in accordance with the above; and

(b) five (5) days following the determination of the purchase price of the Default Class A and B Units and Default Class C Units in accordance with Section 11.8(3),

if a Non-Defaulting Partner(s) has given a notice of acceptance to the Defaulting Partner for all of the Default Class A and B Units and/or Default Class C Units within the Default Period, the Defaulting Partner shall sell all of the Default Class A and B Units and/or Default Class C Units to the applicable Non-Defaulting Partner(s) and the Non-Defaulting Partner(s) shall purchase all of the Default Class A and B Units and/or Default Class C Units at the price determined pursuant to provisions of Section 11.8(3) and upon the other terms and conditions set out in Article 12. In any other case, the deemed offer by the Defaulting Partner to sell the Default Class A and B Units and/or Default Class C Units shall be null and void upon expiration of the Default Period. For greater certainty Non-Defaulting Partner(s) may choose to purchase all of the Default Class A and B Units and none of the Default Class C Units or all of the Default Class C Units and none of the Default Class A and B Units.

(3) The purchase price of any Default Class A and B Units and Default Class C Units, as applicable, being purchased and sold pursuant to the provisions of this Section 11.8 shall be their Fair Market Value as determined by a valuator experienced in the valuation of energy projects, independent from the Parties, appointed jointly by the Limited Partners within 30 days from the first date any notice of acceptance is delivered pursuant to Section 11.8(2), as at the date of the Event of Change. If the Limited Partners cannot agree on the appointment of the valuator, the Defaulting Partner shall appoint its independent experienced valuator and the Non-Defaulting Partner(s) shall also appoint an independent experienced valuator, in which case the Fair Market Value shall be equal to the average between the Fair Market Value determined by each valuator. The valuators shall determine such Fair Market Value as experts and not as umpires or arbitrators. The valuators may seek such information from the Parties as may, in the opinion of the valuators, be reasonably required to effectively determine such Fair Market Value.

**11.9 Right of First Refusal**

(1) If any Limited Partner (the "**Offeror**") desires to sell all or any portion of its Units (the "**Offered Units**") to an Arm's Length third party, the Offeror shall first give a notice (the "**Notice of Sale**") to the other Limited Partners (the "**Offeree(s)**"):

(a) setting out the identity of the Arm's Length third party;

(b) setting out the proposed price and the proposed terms and conditions of the sale;

(c) attaching a copy of any offer received by the Offeror in respect thereof, and

(d) attaching an affidavit of the Offeror or its authorized officer, to the effect that the Offer is a bona fide offer which the Offeror wishes to accept,

whereupon the Offeror shall be deemed to have offered to sell the Offered Units to the Offerees in their respective Proportionate Shares at the price and on the terms and conditions contained in the Notice of Sale.

(2) Within thirty (30) days after an Offeree's receipt of the Notice of Sale (hereinafter in this Section 11.9 the "**Acceptance Period**") the Offeree may give a notice (the "**Acceptance**") to the Offeror and any other Offerees, accepting its Proportionate Share of the Offered Units, and:

(a) if there is more than one Offeree and an Offeree has not accepted to purchase all of its Proportionate Share of the Offered Units, each of the other Offerees shall be entitled to purchase all of its Proportionate Share of the Offered Units that have not been accepted by giving notice to that effect to the Offeror within 10 days from the expiry of the Acceptance Period but the Proportionate Share will be calculated as the proportion that the number of Class A Units and Class B Units owned by the Offeree is to the total aggregate number of Class A Units and Class B Units owned by all of such other Offerees who give such a notice, and this process shall be repeated until all of the Offered Units are being purchased or all of the Offerees have decided not to purchase any more of the Offered Units;

(b) if the Offerees give Acceptances to the Offeror within the Acceptance Period (or the applicable additional 10-day period referred to in the preceding paragraph) for all Offered Units, the Offeror shall sell the Offered Units to the Offerees who give Acceptances and the Offerees who give Acceptances shall purchase the Offered Units thirty (30) days after the giving of all of the Acceptances at the price and on the terms and conditions set out in the Notice of Sale; and

(c) in any other case, within ninety (90) days after the expiration of the Acceptance Period (and additional 10 day periods where applicable), the Offeror may sell the Offered Units to any Person at a price and on terms and conditions no less favourable to the Offeror than the price and terms and conditions set out in the Notice of Sale.

(3) For greater certainty:

(a) failure of an Offeree to reply to the Notice of Sale within the Acceptance Period (or any additional 10-day period, where applicable) shall be construed as a decision not to accept the offer to sell the Offered Units under this Section; and

(b) if the consideration to be received by the Offeror from the Arm's Length third party is one which cannot be matched in kind by an Offeree, the Offeror must set out in the Notice of Sale its bona fide estimate of the value in cash of the consideration that cannot be matched in kind by the Offeree. If the Notice of Sale does not include an estimate as aforesaid, the Offeree may request such estimate, in which event the Acceptance Period shall be suspended until such estimate is received by the Offeree. In case of dispute as to the reasonableness of the estimate, the matter shall be suspended until a final settlement or a final and non-appealable decision in that respect.

**11.10 Parties to Facilitate Transfers.** Each of the Parties agrees to give and execute all necessary consents and approvals to a Transfer of a Partnership Interest which is permitted under this Agreement promptly after the relevant provisions of this Agreement relating to such Transfer have been complied with.

**11.11 Transferee to be Bound.** Notwithstanding anything to the contrary in this Agreement, no Limited Partner shall Transfer any of its Units to any Person other than an existing Limited Partner until such Person has agreed in writing to be bound by the provisions contained in this Agreement that were applicable to the Transferor on the date of the Transfer.

## Article 12
## SALE

**12.1 Title.** Each of the Partners warrants one with the other that it shall have good and marketable title to the Partnership Interest which it may from time to time sell to any other Partner and that the Partner purchasing such Partnership Interest will acquire such Partnership Interest free of encumbrances of any kind and the Partner selling the Partnership Interest will indemnify the Partner that is purchasing the Partnership Interest against any loss which it may suffer as a result of there being any encumbrance upon or any defect in title to such Partnership Interest.

**12.2 Date and Time of Closing.** Any sale and purchase of a Partnership Interest between any of the Partners provided for in Article 11 shall be closed at the offices of the solicitors of the Partnership at 10:00 o'clock in the forenoon on the day provided for in the relevant Section hereof or on such other day as may be agreed upon by the relevant Partners, the actual day and time when the said sale and purchase are to be closed being herein referred to as the "**Date of Closing**" or the "**Time of Closing**" respectively.

**12.3 Payment of Purchase Price.** At the Time of Closing, the Partner selling its Partnership Interest shall deliver certificates representing its Securities, Class B Units or Class C Units duly endorsed in blank for transfer and the Partner purchasing such Partnership Interest shall deliver a certified cheque, bank draft or wire transfer for the purchase price of the Partnership Interest being purchased by such Partner.

**12.4 Partner Indebtedness to the Partnership.** If, at the Date of Closing, the Partner selling its Partnership Interest is indebted to the Partnership in an amount recorded on the books of the Partnership and verified by the accountants or auditors of the Partnership, the Partner purchasing its Partnership Interest shall pay the purchase price of the Partnership Interest to the Partnership, and the Partnership shall deduct such debt therefrom and shall forthwith pay the balance, if any, to the Partner selling its Partnership Interest.

**12.5 Partnership Indebtedness to Partner.**

(k) If, at the Date of Closing, the Partnership is indebted to the Partner selling its Partnership Interest in an amount recorded on the books of the Partnership and verified by the accountants or auditors of the Partnership, then, at the option of the Partner purchasing the Partnership Interest:

(a) the Partnership shall pay such debt to the Partner selling its Partnership Interest by certified cheque at the Time of Closing; or

(b) the Partner purchasing the Partnership Interest shall reimburse and repay the Partner selling its Partnership Interest for the full amount of the indebtedness of the Partnership to the Partner selling its Partnership Interest and the Partner purchasing the Partnership Interest shall thereby acquire the indebtedness of the Partnership owed to the Partner selling the Partnership Interest.

**12.6 Set-Off.** Amounts owing to the Partnership by a selling Partner or one of its Affiliates pursuant to Section 12.4 hereof may be set-off against amounts owing by the Partnership to such Partner pursuant to Section 12.5 hereof, and vice versa.

**12.7 Partner Guarantees.** If, at the Date of Closing, the Partner selling its Partnership Interest has (or one of its Affiliates has) any personal guarantees, securities or covenants pledged with any Person to secure an indebtedness, liability or obligation of the Partnership, then the Partnership and the Partner purchasing its Partnership Interest shall use all reasonable efforts to deliver up or cause to be delivered up to the Partner selling its Partnership Interest and cancel or cause to be cancelled such guarantees, securities and/or covenants at or before the Time of Closing. If such is not possible after the purchasing Partner shall have used its reasonable efforts to procure such cancellation, the purchasing Partner shall, at the Time of Closing and in form reasonably satisfactory to counsel for the Partner selling its Partnership Interest, indemnify and save harmless the Partner selling its Partnership Interest and its Affiliates from and against all claims arising out of any such guarantees, securities and/or covenants whenever such claims arise, and provide to the selling Partner and its Affiliates such security in respect thereof as may be reasonably required by the selling Partner.

## Article 13
## APPOINTMENT, CHANGE, RESIGNATION OR REMOVAL OF GENERAL PARTNER

**13.1 Assignment or Transfer of Partnership Interest of General Partner.** The General Partner shall not sell, assign or otherwise dispose of its interest as the general partner in the Partnership except with the approval by a Special Resolution of the Limited Partners, provided, however, that the General Partner may resign as general partner of the Partnership provided that the General Partner has complied with Section 13.2 hereof.

**13.2 Resignation.**

(1) The General Partner may resign on written notice to the Limited Partners, and such resignation will become effective upon the earlier of:

(a) one hundred twenty (120) days after written notice thereof is given as aforesaid; and

(b) the admission of a new general partner to the Partnership by Special Resolution.

(2) The General Partner's will not be effective if the effect thereof would be to dissolve the Partnership.

**13.3 Replacement.**

(1) Except as provided for in this Section 13.3, the General Partner may not be removed as general partner of the Partnership.

(2) Upon the passing of any resolution of the directors or shareholders of the General Partner requiring or relating to the bankruptcy, dissolution, liquidation or winding-up or the making of any assignment for the benefit of creditors of the General Partner, or upon the appointment of a receiver of the assets and undertaking of the General Partner, or upon the General Partner failing to maintain its corporate status, the General Partner shall cease to be qualified to act as general partner hereunder and shall cease to be the general partner of the Partnership effective upon the appointment of a new general partner. The insolvency or bankruptcy of the General Partner shall not cause the Partnership to be dissolved or terminated and such insolvency or bankruptcy shall not be a ground for applying to any court of competent jurisdiction to have the Partnership wound up or dissolved or its interest in the Partnership property partitioned. A new general partner of the Partnership shall, in such instances, be appointed by Special Resolution.

**13.4 Bankruptcy or Dissolution.** The General Partner will cease to be the general partner of the Partnership in the event of the bankruptcy or insolvency of the General Partner (or the commencement of any act or proceeding in connection therewith which is not contested in good faith by the General Partner) or the appointment of a trustee, receiver or receiver-manager of the affairs of the General Partner, effective upon the admission of a new general partner of the Partnership by Special Resolution.

**13.5 Transfer of Management.**

(1) On the admission of a new general partner to the Partnership on the resignation of the General Partner or the General Partner otherwise ceasing to be the general partner of the Partnership, the outgoing general partner shall do all things and shall take all steps to immediately and effectively transfer the administration, management and operation, assets, books, records and accounts of the Partnership to the new general partner, including the execution of all registrations, bills of sale, certificates, declarations and other documents whatsoever which may be necessary to effect such change and to convey all the assets of the Partnership held by the General Partner to the new general partner of the Partnership. All costs of such transfer shall be for the account of the Partnership.

(2) On the resignation of the General Partner or the General Partner otherwise ceasing to be the general partner of the Partnership and the admission of a new general partner, (i) the outgoing general partner will, at the cost of the Partnership, to the extent required, transfer title to the Partnership property to such new general partner and will execute all deeds, certificates, declarations and other documents necessary or desirable to effect such transfer in a timely fashion, and (ii) assign to the new general partner all Units owned by the outgoing general partner, for the Fair Market Value thereof as determined by the auditors of the Partnership.

**13.6 Release.** Upon the resignation of the General Partner or the General Partner otherwise ceasing to be the general partner of the Partnership, the Partnership and the Limited Partners shall release and hold harmless the General Partner from all Losses suffered or incurred by the General Partner as a result of or arising out of events which occur in relation to the Partnership after the effective time of such resignation of the General Partner or the General Partner otherwise ceasing to be the general partner of the Partnership.

**13.7 New General Partner.** A new general partner of the Partnership will become a Party to this Agreement by signing a counterpart hereof and will agree to be bound by all of the provisions hereof and

to assume the obligations, duties and liabilities of the General Partner hereunder as and from the date the new general partner becomes a Party to this Agreement.

## Article 14
## POWER OF ATTORNEY

### 14.1 Appointment

(1) Each Limited Partner hereby irrevocably makes, constitutes and appoints the General Partner, and any successor to the General Partner under the terms of this Agreement, as its true and lawful attorney and agent, with full power and authority in its name, place and stead to:

(a) execute, deliver, file and/or record in the appropriate public office:

(i) the Declaration and all amendments to the Declaration that may be required; and;

(ii) the declaration required under the British Columbia *Partnership Act* for the Partnership to be registered under that Act and all amendments to that declaration.

(2) The power of attorney granted herein, being coupled with an interest, is irrevocable and shall survive the assignment, to the extent of the obligations of a Limited Partner hereunder, by the Limited Partner of the whole or any part of the Partnership Interest of the Limited Partner in the Partnership and shall be binding upon the successors and assigns of the Limited Partner, and may be exercised by the General Partner on behalf of each Limited Partner in executing any instrument thereon and by listing all the Limited Partners executing such instrument with a single signature as attorney and agent for all of them.

## Article 15
## NOTICES

**15.1 Method of Giving Notice.** All notices pertaining to this Agreement not explicitly permitted to be in a form other than writing will be in writing and will be addressed to the other Party as follows:

If to the Partnership:

Merritt FuelCo Limited Partnership
c/o Dalkia Canada Inc.
Park Place
666 Burrard Street, Suite 500
Vancouver, BC V6C 3P6 Canada
Attention: Fadi Oubari
Facsimile number: (604) 688-2419

with a copy to:

c/o Fengate Capital Management Ltd.
5000 Yonge Street, Suite 1805
Toronto, Ontario M2N 7E9
Attention: Vice-President
Facsimile number: (416) 488-3359

If to the General Partner:

Nicola Valley FuelCo Inc.
c/o Dalkia Canada Inc.
The Exchange Tower, P.O. Box 427
130 King Street West, Suite 1800
Toronto, Ontario, M5X 1E3
Facsimile: (416) 947-0167
E-mail: xpietri@dalkia.ca

with a copy to:

c/o Fengate Capital Management Ltd.
5000 Yonge Street, Suite 1805
Toronto, Ontario M2N 7E9
Attention: Vice-President
Facsimile number: (416) 488-3359

If to NV HoldCo LP:

Nicola Valley Fuel HoldCo Limited Partnership
c/o Dalkia Canada Inc.
Park Place
666 Burrard Street, Suite 500
Vancouver, BC V6C 3P6 Canada
Attention: Fadi Oubari
Facsimile number: (604) 688-2419

with a copy to:

c/o Fengate Capital Management Ltd.
5000 Yonge Street, Suite 1805
Toronto, Ontario M2N 7E9
Attention: Vice-President
Facsimile number: (416) 488-3359

If to Tolko LP:

Tolko Industries Ltd.

P.O. Box 39
3000 – 28 Street
Vernon, BC V1T 6M1
Attention: Fibre Manager
Facsimile number: (250) 549-5335

**15.2 Method of Giving Notice**

(1) Notices will be delivered or transmitted as set out below, and will be considered to have been received by the other Party:

(a) on the date of delivery if delivered by hand or by courier prior to 5:00 p.m. (local time of the recipient) on a Business Day and otherwise on the next following Business Day (it being agreed that the burden of establishing delivery will be on the Party delivering the notice);

(b) in those circumstances where electronic transmission (other than transmission by facsimile) is expressly permitted under this Agreement, on the date of delivery if delivered prior to 5:00 p.m. (local time of the recipient) on a Business Day and otherwise on the next following Business Day, provided that a copy of such notice is also delivered by regular post within a reasonable time thereafter;

(c) on the Business Day following the date of transmission by facsimile, if transmitted prior to 5:00 p.m. (local time of the recipient) on a Business Day and otherwise on the next following Business Day, provided that a copy of such notice is also delivered by regular post within a reasonable time thereafter; and

(d) on the fifth (5th) Business Day following the date of mailing by registered post.

(2) Notwithstanding Subsection 15.2(1), if regular post service, facsimile or other form of electronic communication is interrupted by strike, slowdown, a force majeure event or other cause, a notice, direction or other instrument sent by the impaired means of communication will not be deemed to be received until actually received, and the Party sending the notice will utilize any other such service which has not been so interrupted to deliver such notice.

## Article 16
## AMENDMENT

**16.1 Amendment with Approval of Limited Partners and General Partner.** Unless otherwise provided, this Agreement may only be amended by written approval of all the Partners; but an amendment to this Agreement which will in any manner allow any Limited Partner to take part in the management of the Business will be void.

## Article 17
## DISSOLUTION AND TERMINATION OF THE PARTNERSHIP

**17.1 Events of Dissolution**

(1) The Partnership will be dissolved on the earlier of the occurrence of the following events:

(a) the passage of a resolution of the General Partner approving the dissolution and winding-up of the Partnership which shall provide for the terms and manner in and upon which the Partnership property shall be disposed of and the approval of such dissolution by a Special Resolution of the Limited Partners; or

(b) sale, transfer or other disposition of all of the assets of the Partnership,

but, notwithstanding anything herein to the contrary, no dissolution of the Partnership shall occur until a notice of the dissolution is registered and published as prescribed under *The Business Names Registration Act* (Manitoba).

## Article 18
## CONFIDENTIALITY

**18.1 Confidentiality**

(1) No Partner shall, while it directly or indirectly holds any Units and at all times after it ceases to be a Partner, directly or indirectly, disclose any Confidential Information to any Person, except:

(a) to its Affiliates;

(b) to the professional advisors of such Partner or its Affiliates and who either are bound by the duties of their engagement to maintain the confidentiality of the Confidential Information or enter into a confidentiality agreement in a form reasonably acceptable to the Partnership;

(c) as authorized by the Partnership; or

(d) as required by Law (if the Partner has immediately notified the Partnership of that requirement of Law, unless precluded by Law from doing so).

(2) Each Partner shall use at least the same degree of care in maintaining the confidentiality of the Confidential Information as it uses in maintaining the confidentiality of its own confidential or proprietary information, but in no event with less care than is reasonable given the nature of the information.

(3) No Partner shall use or copy any Confidential Information, except:

(a) to advance the business of the Partnership;

(b) to exercise its rights or to comply with its obligations under this Agreement;

(c) as authorized by the Partnership; or

(d) as required by Law (if the Partner has immediately notified the Partnership of that requirement of Law, unless precluded by Law from doing so).

(4) The Partnership may at any time require a Partner that ceases to be a Partner to immediately deliver to the Partnership or, at the Partnership's option, to immediately erase or destroy, any documents and other materials and copies and translations of them (whether recorded, stored or reproduced in or on any medium or by means of any device) containing any Confidential Information in the Partner's possession or control, except in the case of any Confidential Information that is in electronic format to the extent contained on archived back-up tapes that are not readily accessible. The Partner shall provide evidence satisfactory to the Partnership that all those documents, materials, copies and translations have been delivered, erased or destroyed.

(5) Each Partner acknowledges that a breach or threatened breach of its obligations under this 18.1 would result in irreparable harm to the Partnership that could not be calculated or adequately compensated by recovery of damages alone. Each Partner therefore agrees that the Partnership shall be entitled to interim or permanent injunctive relief, specific performance and other equitable remedies.

## Article 19
## GENERAL

**19.1 Governing Law.** This Agreement shall be governed by and construed in accordance with the Laws of the Province of Manitoba and the Laws of Canada applicable therein and shall be treated in all respects as a Manitoba contract.

**19.2 Severability.** Each provision of this Agreement is intended to be severable. If any provision hereof is found to be unenforceable by a court of competent jurisdiction, then such provision will be

deemed to be severed from this Agreement and the remainder of this Agreement will not be affected and will remain in full force and effect to the extent permitted by Law.

**19.3 Limited Partner Not a General Partner.** If any provision of this Agreement has the effect of imposing upon any Limited Partner any of the liabilities or obligations of the General Partner or the Partnership, such provision will be of no force or effect.

**19.4 Time of Essence.** Time shall be of the essence of this Agreement.

**19.5 Counterparts.** This Agreement may be executed in any number of counterparts with the same effect as if all Parties had signed the same document. Each counterpart so executed will constitute an original and all counterparts will be construed together and will constitute one and the same agreement.

**19.6 Further Assurances.** The Parties agree to execute and deliver such further and other documents, cause such meetings to be held, resolutions passed and by-laws enacted, exercise their votes and influence, and perform and cause to be performed such further and other acts and things, as may be necessary or desirable in order to give full effect to this Agreement and every part hereof.

**19.7 Binding Effect.** This Agreement will be binding upon and enure to the benefit of the Parties and, to the extent permitted hereunder, their respective successors and assigns.

**19.8 Entire Agreement.** This Agreement, the Tolko Fuel Supply Agreement, the Fuel Supplier Acknowledgement and Consent Agreement, any Tolko Fuel Supplier Liability Agreement and the Escrow Agreement (including after the termination or expiry of any Tolko Fuel Supplier Liability Agreement, the Tolko Fuel Supply Agreement and the Escrow Agreement to the extent any defined terms in those agreements are incorporated into this Agreement) constitute the entire agreement among the Parties with respect to the subject matter hereof and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, among the Parties with respect to the subject matter hereof. There are no conditions, covenants, representations, warranties, or other agreements between the Parties in connection with the subject matter hereof except as specifically set forth herein.

**[Signature page follows]**

**IN WITNESS WHEREOF**, the Parties have signed this Limited Partnership Agreement as of the day and year first above written.

**NICOLA VALLEY FUELCO INC.**

By: _____
Name: Xavier Pietri
Title: President

**NICOLA VALLEY FUEL HOLDCO LIMITED PARTNERSHIP** represented by its general partner Merritt Fuel HoldCo Inc.

By: _____
Name: Xavier Pietri
Title: President

**8909580 CANADA LTD.**

By: _____
Name:
Title:

By: _____
Name:
Title:

**IN WITNESS WHEREOF**, the Parties have signed this Limited Partnership Agreement as of the day and year first above written.

**NICOLA VALLEY FUELCO INC.**

By: _____
Name: Xavier Pietri
Title: President

**NICOLA VALLEY FUEL HOLDCO LIMITED PARTNERSHIP** represented by its general partner Merritt Fuel HoldCo Inc.

By: _____
Name: Xavier Pietri
Title: President

**8909580 CANADA LTD.**

By: _____
Name:
Title:

By: _____
Name:
Title:

**AMENDMENT TO LIMITED PARTNERSHIP AGREEMENT AND TRANSFER OF PARTNERSHIP INTEREST**

This Agreement dated May 21, 2021 is

made AMONG:

**NICOLA VALLEY FUELCO INC.**, a corporation existing under the laws of Canada,

(the "**Initial General Partner**")

AND:

**NICOLA VALLEY FUEL HOLDCO LIMITED PARTNERSHIP**, a limited partnership existing under the laws of the Province of Manitoba,

("**NV HoldCo LP**")

AND:

**8909580 CANADA LTD.** a corporation existing under the laws of Canada.

("**Tolko LP**")

**PREAMBLE**

**WHEREAS:**

A. The Initial General Partner, NV HoldCo LP and Tolko LP formed Merritt FuelCo Limited Partnership (the "**Partnership**") pursuant to the provisions of the Act and a limited partnership agreement (the "**Limited Partnership Agreement**") dated July 7, 2014 made among the Initial General Partner, NV HoldCo LP and Tolko LP;

B. Section 11.5 of the Limited Partnership Agreement provides that, among other things, except as otherwise permitted pursuant to the provisions of Section 11.6, Section 11.7, Section 11.8 or Section 11.9, Tolko LP will not Transfer, directly or indirectly, its Partnership Interest, or any part thereof, or any right, title or interest therein; and

C. The Initial General Partner, NV HoldCo LP and Tolko LP are entering into this Agreement to (i) amend the Limited Partnership Agreement to allow Tolko LP to transfer its Partnership Interest to NV HoldCo LP as provided in this Agreement, and (ii) to provide for the transfer by Tolko LP of its Partnership Interest to NV HoldCo LP and the release of Tolko LP from the Limited Partnership Agreement.

**NOW THEREFORE**, the Parties agree as follows:

1.1 **Definitions.** Terms used in this Agreement, including in the preambles to this Agreement, which are defined in the Limited Partnership Agreement have the meanings given to those terms in the Limited Partnership Agreement unless otherwise defined in this Agreement.

1.2 **Amendment to Limited Partnership Agreement.** Notwithstanding Section 11.5 of the Limited Partnership Agreement, the Limited Partnership Agreement is hereby amended to permit the transfer by Tolko LP of its Partnership Interest to NV HoldCo LP pursuant to and as provided in this Agreement.

1.3 **Transfer by Tolko LP of its Partnership Interest to NV HoldCo LP.** Tolko LP hereby sells, transfers, assigns and conveys to NV HoldCo LP, and NV HoldCo LP hereby purchases and accepts, all of Tolko LP's Partnership Interest for the purchase price of $2,500 and the assumption of Tolko LP's obligations under the Limited Partnership Agreement. NV HoldCo LP hereby (i) assumes the obligations of Tolko LP under the Limited Partnership Agreement, and (ii) will pay the purchase price of $2,500 to Tolko LP upon execution and delivery of this Agreement (such transaction, the "**LP Interest Transfer**"). NV HoldCo LP acknowledges the certificates representing the Units included in the Partnership Interest being acquired from Tolko LP are contained in the Partnership record book. The Initial General Partner hereby approves the foregoing transfer and the form of the foregoing transfer of Tolko LP's Partnership Interest. The Initial General Partner will make any filings with any government authority that may be required as a result of the transactions contemplated in this Agreement.

1.4 **Representations and Warranties.** The parties to this Agreement represent and warrant as follows:

(a) Tolko LP represents and warrants to NV HoldCo LP that Tolko LP's Partnership Interest is transferred to NV HoldCo LP pursuant to this Agreement free and clear of all liens, encumbrances, charges, pledges, security interests and hypothecations; and

(b) each of Tolko LP, the Initial General Partner and NV HoldCo LP represents and warrants to the other parties that it has obtained all consents or other approvals that are required for it to enter into the transactions provided for in this Agreement.

These representations and warranties will survive the transfer of Tolko LP's Partnership Interest provided for in this Agreement.

1.5 **Mutual Release.**

(a) **Terms of Release.** In this Agreement, (i) "**Related Entities**" means a party's respective current and former affiliates, officers, directors, employees, partners, agents, representatives, administrators, successors, assigns, subsidiary corporations, parent corporations, and related corporate divisions and successors; and (ii) "**Released Claims**" means any and all manner of rights, claims, complaints, demands, causes of action, actions, suits, proceedings, liabilities and obligations of any nature and kind whatsoever and howsoever arising, at law or in equity, arising out of or relating to the

this Agreement, the Limited Partnership Agreement, or the LP Interest Transfer. For the sake of clarity, the Partnership is a Related Entity of Initial General Partner and NV HoldCo LP.

(b) **Release by Tolko.** Tolko LP on its own behalf and on behalf of its Related Entities hereby (i) acknowledges and agrees that, as a result of the LP Interest Transfer, Tolko LP is no longer a Limited Partner and (ii) releases, remises and forever discharges FuelCo and each of its Related Entities of and from all Released Claims.

(c) **Release by Initial General Partner and NV HoldCo LP.** Each of the Initial General Partner and NV HoldCo LP, on its own behalf and on behalf of its Related Entities, hereby (i) acknowledges and agrees that, as a result of the LP Interest Transfer, Tolko LP is no longer a Limited Partner and (ii) releases, remises and forever discharges Tolko LP and each of its respective Related Entities of and from all Released Claims.

1.6 **Further Assurances.** Each of the parties to this Agreement shall execute and deliver all further documents and perform all other acts as may be necessary or desirable to give effect to the terms of this Agreement.

1.7 **Enurement.** Each Agreement shall enure to the benefit of and shall be binding upon each of the parties to this Agreement and each of their respective successors and assigns.

1.8 **Independent Legal Advice.** Each of the parties to this Agreement acknowledges that this Agreement has been executed voluntarily after receiving independent legal advice.

1.9 **Governing Laws.** The validity, interpretation and enforceability of this Agreement shall be governed by the laws of the Province of British Columbia and the laws of Canada applicable therein. The parties to this Agreement hereby agree to attorn to the jurisdiction of the courts of the Province of British Columbia in respect of any disputes arising out of or resulting from this Agreement.

1.10 **Severability.** If any term or provision of this Agreement is held invalid or unenforceable, the invalidity or unenforceability thereof shall not be deemed to render any other terms and provisions hereof invalid or unenforceable.

1.11 **Entire Agreement.** This Agreement constitutes the whole and entire agreement between the parties hereto regarding the transfer of Tolko LP's Partnership Interest by Tolko LP to NV HoldCo LP and cancels and supersedes any prior agreements, undertakings, commitments and representations, written or oral, regarding the transfer of Tolko LP's Partnership Interest by Tolko LP to NV HoldCo LP.

1.12 **Counterparts.** This Agreement may be executed in counterparts each of which is deemed to be an original document and all of which are deemed one and the same document.

**[Signature page follows]**

**IN WITNESS WHEREOF**, the Parties have signed this Agreement as of the day and year first above written.

**NICOLA VALLEY FUELCO INC.**

By: _____
Name: Eric Train-Lagarde
Title: CEO

**NICOLA VALLEY FUEL HOLDCO LIMITED PARTNERSHIP**
represented by its general partner Merritt Fuel HoldCo Inc.

By: _____
Name:
Title:

**8909580 CANADA LTD.**

By: _____
Name: Troy Connolly
Title: Vice President, Solid Wood

By: _____
Name: Trevor Jahnig
Title: CFO

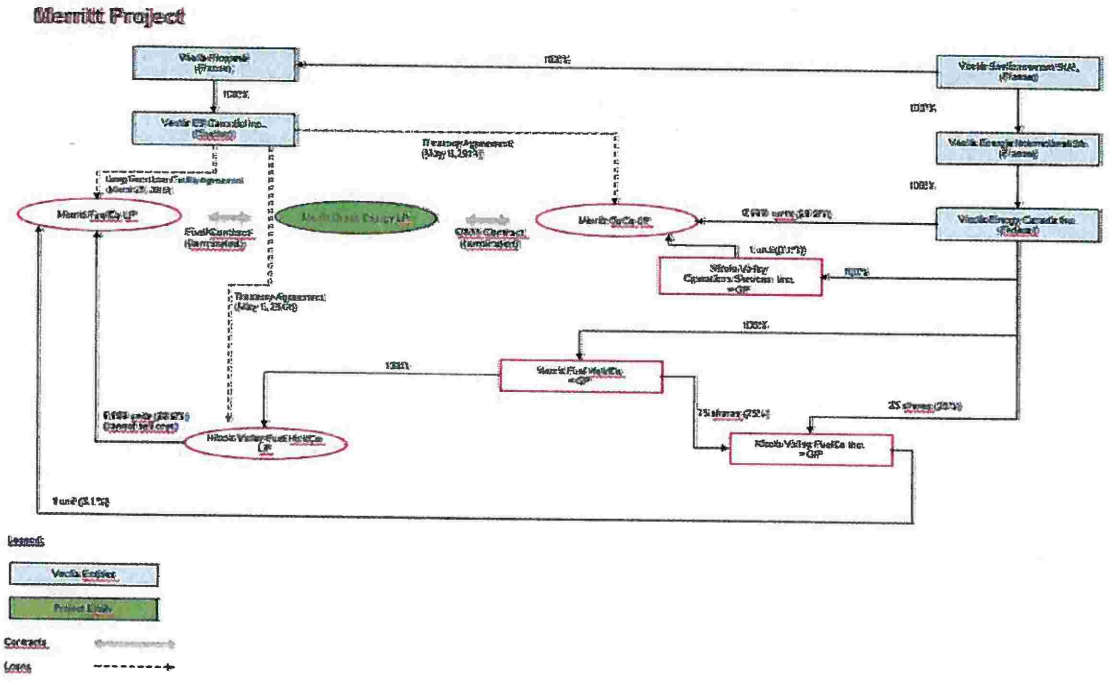
This is Exhibit "B" referred to in the Affidavit of Brian J. Clarke made before me this 23rd day of May 2022.

_____

A Commissioner for Taking Affidavits in the Province of British Columbia

EXHIBIT "B"

Project Simplified Organizational Chart



This is Exhibit "C" referred to in the Affidavit of Brian J. Clarke made before me this 23rd day of May 2022.

_____

A Commissioner for Taking Affidavits in the Province of British Columbia

# LONG TERM LOAN FACILITY AGREEMENT

between

**MERRITT FUELCO LIMITED PARTNERSHIP**

Borrower

and

**VEOLIA ES CANADA, INC.**

Lender

dated March 27, 2018

**THIS AGREEMENT IS MADE BETWEEN**

(1) **Merritt Fuelco Limited Partnership**, a limited partnership under the laws of Canada, whose registered address is : 201 Portage Avenue, Suite 2200, Winnipeg, MB, R3B 3L3, Canada,

hereinafter referred to as the "**Borrower**",

**AND**

(2) **Veolia ES Canada, Inc.**, a corporation incorporated under the laws of Canada, whose registered address is 1705 3ème Avenue, Montreal, Quebec H1B 5M9, Canada

hereinafter referred to as the "**Lender**"

collectively, the "**Parties**" and each, individually, a "**Party**".

**WHEREAS**

(A) The Borrower is a joint venture, of which Veolia Environnement SA (VE) indirectly holds 45% but which VE, via its subsidiaries, has management control and fully consolidates.

(B) Considering the need for financing expressed by the Borrower and its financing forecasts and in particular, working capital expenditures associated with the procurement and processing of fibre for the Borrower, the Lender agreed to provide a long-term loan / line of credit, in an aggregate amount of up to CAD 1,000,000 (one million Canadian dollars) (the "**Loan**").

(C) The Loan is subject to the terms and conditions of this agreement (the "**Agreement**").

**IT IS AGREED AS FOLLOWS:**

## 1. DEFINITIONS - INTERPRETATION

### 1.1. Definitions

In this Agreement except where the context otherwise requires:

"**Breakage Costs**" means, in the event of a prepayment of all, or part, of the Loan, the difference, if any, between:

(i) the interests which the Lender should have received for the amount prepaid, from the date of prepayment up to the last day of the current Interest Period; and

(ii) the amount which the Lender would be able to obtain, by placing an amount equal to the prepaid amount, on deposit with a leading bank for the period stated in (i) above.

"**Business Day** means a day (other than a Saturday or Sunday) on which banks are open for general business in Montréal and in the principal financial centers of Canada;

"**CAD**" refers to the Canadian Dollar, the lawful currency of Canada;

"**PRIME CANADA**" means: the Canadian dollar prime rate as defined by Royal Bank of Canada (as referenced under CAPBRY on Bloomberg);

"**Change of Control**" means any change of the Borrower's voting rights or capital;

"**Commencement Date**" means March 27, 2018;

"**Default**" means an Event of Default or an event which, with the giving of notice, expiry of any applicable grace period or due to any decision taken based on this Agreement, would constitute an Event of Default;

"**Event of Default**" means any event specified as such in Clause 16 (*Events of Default*);

"**Final Maturity Date**" means March 26, 2028;

"**Interest Period**" means the interest period of the Loan as determined in accordance with Clause 8 (*Interest Period*);

"**Margin**" means 5.0% per annum;

"**Material Adverse Effect**" means that the legal or financial ability of the Borrower to perform its payment obligations under this Agreement is affected in a material way or the financial condition of the Borrower is significantly altered;

"**Quotation Day**" means, for any Interest Period, the second Business Day before the first day of the relevant Interest Period;

"**Reference Banks**" means the banks designated by the Lender; and

"**Reference Rate**" means Canadian Prime.

1.2. **Construction**

1.2.1. In this Agreement, unless the contrary intention appears, any reference to:

(a) "**assets**" includes present and future properties, revenues and rights of every description;

(b) an "**authorisation**" includes any authorisation, consent, approval, resolution, licence, exemption or registration;

(c) "**indebtedness**" includes any obligation, whether incurred as principal or as surety, for the payment or repayment of money, whether present or future, actual or contingent;

(d) a "**month**" is a reference to a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month;

(e) a "**person**" includes any individual, company, unincorporated association or body of persons (including a partnership, joint venture or consortium), government, state, agency, international organisation or other entity;

(f) a "**regulation**" includes any decree, regulation, rule, official directive, guideline or recommendation (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;

(g) "tax" means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same) existing on the Commencement Date or created afterwards;

(h) a provision of law is a reference to that provision as amended or re-enacted;

(i) a clause or an annex is a reference to a clause of or an annex to this Agreement;

(j) a person includes its successors, transferees and assigns; and

(k) this Agreement is a reference to this Agreement as amended or supplemented from time to time.

1.2.2. The annexes form an integral part of the Agreement and have the same binding force as the other provisions of the Agreement.

1.2.3. Unless the contrary intention appears, a time of day is a reference to Montreal time.

1.2.4. A Default or an Event of Default is deemed "outstanding" as long as it has not been remedied or waived.

## 2. LOAN

Subject to the terms of this Agreement, the Lender agrees to make the Loan available to the Borrower, which accepts it.

## 3. PURPOSE

The Borrower shall apply all amounts borrowed under the Loan towards working capital needs.

The Lender shall not be obliged to enquire or monitor the application of any amount borrowed under this Agreement, nor will it be liable for such enquiry or monitoring.

## 4. AVAILABILITY

4.1. On the Commencement Date, the Lender will make the Loan available by credit to the Borrower's current account open in the books of the Lender, if any, or to the Borrower's bank account, details of which shall have been given to the Lender no later than five Business Days before the Commencement Date.

4.2. The Lender will not be compelled to make the Loan available if on the Commencement Date :

(a) a Default is outstanding or the making of the Loan could result in a Default; or

(b) the representations and warranties stated in Clause 14 (*Representations and warranties*) and to be repeated on the Commencement Date are not correct in all material respects.

## 5. REPAYMENT

Without prejudice to the provisions of Clause 6 (*Voluntary prepayment*), the Loan shall be repaid in full on the Final Maturity Date.

## 6. PREPAYMENT

### 6.1 Illegality

If it becomes unlawful, for either Party, to perform its obligations as contemplated by this Agreement or to fund or maintain the Loans:

(a) it will inform the other Party, as soon as possible;

(b) the Loan will be immediately cancelled; and

(c) all sums due under this Agreement in principal, interest, default interest, commissions and fees will become immediately due and payable.

### 6.2 Voluntary prepayment

6.2.1 The Borrower may, at any time, prepay the Loan, in whole or in part.

6.2.2 Any prepayment under this Clause shall:

(a) take place on a Business Day; and

(b) be notified to the Lender no later than 5.00 p.m. (Eastern Time) five Business Days before the proposed prepayment date.

6.2.3 Any notice of voluntary prepayment is irrevocable.

### 6.3 Mandatory prepayment

The Lender may, by notice to the Borrower, cancel the Loan and declare all sums owed under this Agreement in principal, interest, default interest, commissions and fees and other expenses, immediately due and payable in any of the following cases:

(a) Change of Control of the Borrower; or

(b) The Loan or the operation underlying the Loan, as the case may be, is not submitted in due time or proper form for necessary filing or registration with or is not granted necessary approval by any relevant *de facto* or *de jure* government (or agency or instrumentality thereof), court, tribunal, administrative or other governmental authority or any other relevant entity (private or public).

### 6.4 Miscellaneous provisions

6.4.1 All prepayments under this Agreement shall be made together with accrued interest on the amount prepaid and, as the case may be, default interest, commissions, fees and other expenses payable in relation to this sum.

6.4.2 In case of a voluntary prepayment, the Lender may request the Borrower to pay the Breakage Costs caused by such prepayment (if any), on the date of that prepayment.

6.4.3 Any amount prepaid under this Clause 6 may not be borrowed again.

## 7 INTEREST

### 7.1 Calculation and payment of interest

7.1.1 The outstanding amount of the Loan will bear interest at a rate per annum equal to the sum of:

(a) the Reference Rate, and

(b) the Margin.

7.1.2 Accrued interest on the outstanding amount of the Loan will be paid by the Borrower on the last day of each Interest Period (or if the Interest Period exceeds six months, every six months after the Commencement Date), in accordance with Clause 17 (*Payments and Calculations*).

### 7.2 Priority of interest and principal payment over dividend payment

7.2.1 Unless the Lender has given its prior written consent, the Borrower shall not pay any distributions to its as long as any interest and principal payments are outstanding under this Agreement. The Loan shall be repayable by the Borrower to the Lender in priority over any distribution on any issued and outstanding Units under Section 10.6(2) of the Borrower's limited partnership agreement.

### 7.3 Default interest

7.3.1 Any sum payable by the Borrower to the Lender under this Agreement which is not paid on its due date shall bear interest, from the relevant due date (inclusive) until its actual date of payment (exclusive), at a rate per annum equal to the interest rate which would be calculated in accordance with Clause 7.1 (*Calculation and payment of interest*) on the relevant due date, as if such sum were an amount of principal of the Loan, plus 2%.

7.3.2 Default interest pursuant to Clause 7.3.1 shall accrue automatically as of right and without need of notification (*mise en demeure*) by the Lender. The payment by the Borrower of default interest shall not constitute the grant of an extension of the due date for the overdue amount or any waiver of the Lender's rights under this Agreement in relation to such overdue amount, and Clause 16 (*Events of Default*) shall remain fully applicable.

### 7.4 All-in rate (*taux effectif global*)

7.4.1 The parties expressly acknowledge that as a result of the characteristics of this Agreement and in particular the reference to a variable rate, it is not possible to determine the All-in Rate on the date of execution of this Agreement.

7.4.2 For instance, assuming PRIME CANADA is equal to 3.45% per annum on March 27, 2018, then the All in Rate would be 8.45% per annum.

7.4.3 If the all-in rate is less than zero, it will be deemed to be zero.

7.5 **Notification**

The Lender shall notify the Borrower, as soon as practicable of all interest rate determined pursuant to Clauses 7.1 and 7.3. Such interest rates will bind the Parties, save in case of manifest error.

## 8 INTEREST PERIODS

8.1 The Loan shall have interest periods of 3 months (each an "**Interest Period**"), provided that the first Interest Period shall start on the Commencement Date and end on the following earliest date: March 31st, June 30th, September 30th or December 31st.

8.2 If an Interest Period would end on a day which is not a Business Day, it will be extended to the following Business Day, unless such Business Day is in a different calendar month, in which case it will be shortened to the preceding Business Day.

8.3 If an Interest Period would end on a day which is past the Final Maturity Date, it will be automatically shortened so that there is no overrunning of the Final Maturity Date.

## 9 CHANGES TO THE CALCULATION OF INTEREST

9.1 If on a Quotation Day, the Lender determines that it is not possible, for any reason, to determine the Reference Rate as stated in Clause 1.1 (*Definitions*), it will immediately inform the Borrower and the following provisions of Clause 9 will apply.

9.2 The Lender and the Borrower shall enter into negotiations in order to determine, in good faith, a mutually acceptable substitution rate for the relevant Interest Period. If, within thirty days, the Borrower and the Lender have agreed on a substitute rate, it will apply retrospectively to the whole Interest Period.

9.3 If no agreement is reached within these thirty days, the applicable interest rate will be equal to the cost of funding of the Lender, plus the Margin.

## 10 TAXES

10.1 All payments to be made by the Borrower under this Agreement shall be made net of any tax or deduction for or on account of any taxes, whether actual or future.

10.2 Without prejudice to the above provisions, if a tax withholding or deduction applies, the Borrower shall increase its payments so that the Lender receives, after making the relevant withholding or deduction, the amount it would have been entitled to receive, had no withholding or deduction been required.

## 11 INCREASED COSTS

11.1 If, after the Commencement Date, the Lender incurs any increased cost due to (i) the introduction of any new law or regulation, or (ii) any change in the interpretation of any existing law or regulation, or (iii) a change in the application of an existing law or regulation by any official authority, it shall notify the Borrower immediately and provide an estimate of the relevant increased cost and applicable indemnity. The Lender shall also deliver to the Borrower any evidence or receipts of the aforementioned calculation, as soon as practicable.

11.2 The following provisions shall then apply:

(a) the Borrower and the Lender will enter into good faith negotiations to avoid or mitigate those costs; and

(b) if no agreement is found within thirty days following the receipt of the written notice set forth in Clause 12.1 above, the Borrower shall be entitled to :

(i) either continue the Loan, and bear the increased costs applicable from the date of receipt of the written notice set forth in Clause 12.1 above; or

(ii) terminate this Agreement and within seven Business Days prepay all sums owed under this Agreement in principal, interest, fees and others expenses while bearing the increased costs until the prepayment date.

11.3 In this Agreement, "**increased cost**" means any reduction in the effective return of the Lender or any additional cost or charge incurred by the Lender as a result of maintaining the Loan.

## 12 INDEMNITIES

Without prejudice to the other provisions of this Agreement, the Borrower shall, upon documented request, indemnify the Lender for:

(a) all costs and expenses (including any legal fees, taxes and breakage costs) reasonably incurred by the Lender in connection with the enforcement of, or the preservation of any rights under this Agreement (including by reason of an Event of Default); and

(b) all costs and expenses reasonably incurred by the Lender in responding to, evaluating, negotiating or complying with any amendment requested by the Borrower.

## 13 REPRESENTATIONS AND WARRANTIES

The Borrower makes the following representations and warranties to the Lender.

### 13.1 Status

The Borrower is duly incorporated and validly existing as a company under the laws of Canada. It has the power to own its assets and carry on its business.

### 13.2 Powers and authority

It has the power to enter into and perform this Agreement and the transactions contemplated by this Agreement.

### 13.3 Legal validity

This Agreement constitutes its legal, valid and binding obligations enforceable in accordance with its terms.

**13.4 Authorisations**

All authorisations required in connection with the entry into, performance, validity and enforceability of this Agreement have been obtained or effected and are in full force and effect.

**13.5 Non-conflict**

The entry into this Agreement and performance of the transactions contemplated by this Agreement do not conflict (i) with any law or regulation applicable to it or (ii) with its constitutional documents or (iii) with any agreement or instrument binding upon it.

**13.6 *Pari passu* ranking**

Its payment obligations under this Agreement (provided that such obligations do not benefit from a priority of payment according to any security interest (sûreté) granted under this Agreement) rank at least pari passu with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally.

**13.7 No default**

No Default is outstanding or may result from the Loan.

**13.8 No material adverse change**

There has been no material adverse change in the condition of the Borrower (whether financial, commercial, legal or otherwise) or in the prospects of the Borrower since the end of its last fiscal year.

**13.9 Repetition of representations and warranties**

The representations and warranties set out in this Clause 14 will, except for Clause 14.2, be repeated at the beginning of each Interest Period.

## 14 UNDERTAKINGS

The undertakings in this Clause will remain in force from the Commencement Date for so long as any amount is outstanding under this Agreement.

**14.1 Information**

The Borrower shall:

(a) promptly upon becoming aware of it, notify the Lender of any Default, together with the details of such Default and the steps taken to remedy such Default;

(b) promptly upon becoming aware of it, notify the Lender of any event (and in particular, any litigation, arbitration or administrative proceedings which are current or pending) which could have a Material Adverse Effect; and

(c) provide the Lender with any information or document, which the Lender may request in accordance with its internal auditing or control procedures, or which is requested by any regulatory authority.

**14.2 Status**

The Borrower shall do all such things as are necessary to maintain its corporate existence and ensure that it has the right and is duly qualified to conduct its business.

**14.3 Authorisations**

The Borrower shall obtain or maintain any authorisations required, as the case may be, to enable it to perform this Agreement.

**14.4 *Pari passu* ranking**

The Borrower shall procure that its payment obligations under this Agreement (provided that such obligations do not benefit from a priority of payment according to any security interest granted pursuant to this Agreement) will rank at least pari passu with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally.

**14.5 Compliance with law**

The Borrower shall comply with any law or regulation which is or may become applicable to it.

**15 EVENTS OF DEFAULT**

Each of the events set out in this Clause is an Event of Default.

**15.1 Non-payment**

The Borrower does not pay on the due date any amount of principal, interest, commissions, fees or expenses payable by it under this Agreement.

**15.2 Breach of other obligations**

The Borrower does not comply with any provision of this Agreement or breaches any of its undertakings under this Agreement.

**15.3 Misrepresentation**

A representation made by the Borrower is incorrect when made or repeated.

**15.4 Cross default**

(a) The Borrower fails to pay on the due date (after expiry of any applicable grace period) any sum due in respect of any financial indebtedness.

(b) Any financial indebtedness of the Borrower is declared, or becomes capable of being declared, payable as a result of a default of the Borrower or any other condition or event (howsoever described).

(c) The action or omission of the Borrower has resulted in an event of default under the contract as a result of a default of the Borrower or any other condition or event (howsoever described in such contract).

15.5 **Insolvency**

The Borrower:

(a) takes steps for its winding up or liquidation;

(b) an involuntary or voluntary case is commenced against the under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or a decree or order of a court having jurisdiction in the premises for the appointment of a receiver, liquidator, sequestrator, trustee, custodian, *administrateur judiciaire* or other officer having similar powers over the Borrower or over all or a substantial part of its property, shall have been entered; or the involuntary or voluntary appointment of an interim receiver, trustee or other custodian of the Borrower or for all or a substantial part of its property occurs; or a warrant of attachment or execution is issued, or a similar process is initiated, against any substantial part of the property of the Borrower, ;

(c) is in a situation where a moratorium is declared in respect of any of its debts;

(d) suspends making payments on any of its debts or admits inability to pay its debts as they fall due;

(e) becomes insolvent for the purpose of any insolvency law; or

(f) begins negotiations with one or more creditors with a view to the readjustment or rescheduling of any its debts.

15.6 **Creditors' process**

Any expropriation, attachment, sequestration, distress or execution affects any asset or assets of the Borrower.

15.7 **Cessation of Business**

The Borrower ceases, or takes clear steps to cease, to carry on all or a substantial part of its business.

15.8 **Material adverse change**

Any event or series of events occurs which has a Material Adverse Effect.

15.9 **Acceleration**

On and at any time after the occurrence of an Event of Default, and whilst the same is continuing, the Lender may, by notice to the Borrower:

(a) cancel the Loan; and/or

(b) declare all sums owed under this Agreement in principal, interest, default interest, commissions, fees and other expenses immediately due and payable.

## 16 PAYMENTS AND CALCULATIONS

16.1 All sums due by the Borrower under this Agreement shall be paid by debit of the Borrower's current account opened in its name in the Lender's books, or by transfer to the

Lender's bank account, references of which shall have been provided to the Borrower no later than 11.00 a.m. two Business Days before the date of payment.

16.2 Any payment made to the Lender shall be allocated in the following order:

(a) first, to the reimbursement of commissions;

(b) second, to the payment of any default interest;

(c) third, to the payment of any unpaid interest; and

(d) fourth, to the payment of any unpaid principal.

16.3 All payment under this Agreement shall be made on a Business Day. If a payment is due on a day which is not a Business Day, such payment will be deferred to the following Business Day, unless such Business Day is in a different calendar month, in which case the payment will be made on the preceding Business Day.

16.4 All payments under this Agreement shall be made in EUR, unless otherwise expressly agreed.

16.5 Interest shall be capitalised on the sums which remain outstanding under this Agreement and interest will accrue on these sums in accordance with Clause 7.3 (*Default interest*).

16.6 Any interest, commission or fee will be calculated on the basis of the actual number of days elapsed in a year of 360 days.

## 17 SET OFF

17.1 If any amount due to the Lender under this Agreement is not paid on the due date or in accordance with this Agreement, the Lender may recover that sum by way of set off.

17.2 Any sum due by the Borrower under this Agreement will be paid for its gross amount without set off.

## 18 CHANGES TO THE PARTIES

18.1 This Agreement shall be binding upon and shall inure to the benefit of the Borrower and the Lender and their respective permitted successors and assigns.

18.2 The Borrower may not assign, transfer or dispose of any of its rights and/or obligations under this Agreement, including by way of merger or demerger, without the prior agreement of the Lender.

18.3 The Lender may at any time assign or transfer any of its rights and obligations, upon notice to the Borrower.

## 19 NOTICES

Any communication to be made under or in connection with this Agreement shall be made to the following addresses (or any other address notified under this Clause). A notice shall be deemed validly made on the date of its effective receipt by the addressee, i.e. the date mentioned on the acknowledgement of receipt.

For the Borrower:

**Merritt FuelCo Limited Partnership**
Attention: Andrew Rovansek, Director off Finance (Veolia North America, Municipal & Commercial Business - Canada)
Email: andrew.rovansek@veolia.com

For the Lender:

**Veolia ES Canada, Inc.**
**Att: Treasurer**
treasurysse@veolia.com and brian.sullivan@veolia.com

## 20 MISCELLANEOUS

### 20.1 Waivers and remedies cumulative

Failure by any Party to exercise or any delay in exercising its rights under this Agreement or under applicable law shall not operate as a waiver of these rights, and shall not be interpreted as such. The rights stipulated in this Agreement are cumulative with, and shall not prejudice, any other rights granted by law to the Parties.

### 20.2 Severability

In the event that any of the provisions of this Agreement is held to be void or unenforceable under applicable law, the other provisions of this Agreement will not be affected unless a Party can demonstrate that the relevant provision was essential in its decision to enter into this Agreement and it would not have entered in this Agreement without this provision.

## 21 APPLICABLE LAW – JURISDICTION

21.1 The Agreement shall be governed by the laws of Quebec, Canada.

21.2 Any dispute relating to its validity, construction or performance shall be exclusively settled by the by the courts of Montreal, Quebec.

[The signature page follows]

On March 27, 2018 in two originals,

**Veolia ES Canada, Inc.**

By: Brian Sullivan, Treasurer

**Merritt Fuelco Limited Partnership**
**By: Nicola Valley Fuelco Inc. (General Partner)**

By: John Gibson, Chief Operating Officer
Veolia Energy North America, Inc.

This is Exhibit "D" referred to in the Affidavit of Brian J. Clarke made before me this 23rd day of May 2022.

A Commissioner for Taking Affidavits in the Province of British Columbia

BY EMAIL

May 9, 2022

Merritt FuelCo Limited Partnership
3 Bentall Centre
PO Box 49314
Suite 2600 - 595 Burrard Street
Vancouver, BC V7X 1L3
Attention: Stephane Jouzier
E-mail: stephane.jouzier@veolia.com

RE: **Notice of Termination and Demand for Payment**

Ladies and Gentlemen:

Reference is made to the *Long Term Loan Facility Agreement* dated March 27, 2018 (the "**Agreement**"), between Merritt FuelCo Limited Partnership (the "**Borrower**") and Veolia ES Canada Inc. (the "**Lender**"). Unless otherwise defined, all capitalized terms have the meaning ascribed to them in the Agreement.

The Lender is informed that the Borrower has effectively wound down and ceased its operations, a development which has a Material Adverse Effect and leads the Lender to believe that the amounts owing to it under the Agreement will not be paid in the foreseeable future. Moreover, the Lender will not advance additional funds to the Borrower, without which the Borrower will be unable to pay its liabilities as they become due. The Borrower is therefore clearly in default under sections 15.5 and 15.8 of the Agreement.

As of April 30, 2022, the total amount of indebtedness owing by the Borrower to the Lender under the Agreement in principal, interest, costs, and fees represents $13,751,727.79, plus continuing interest (the "**Indebtedness**").

Be advised that unless the totality of the Indebtedness is paid to the Lender by no later than May 19, 2022, the Lender will be entitled to and will immediately exercise its remedies without any further notice or delay, including all of the Lender's rights, remedies and recourses under the Agreement and at law. This Notice of Default and Demand for Payment is sent to you under reserve of the Lender's rights under the Agreement, including its right to raise additional defaults.

Yours Truly,

Brian Clarke, President and CEO
Veolia ES Canada Inc.