

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

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PUBLIC SERVICE  
COMMISSION

In the Matter of:

THE JOINT APPLICATION OF HERITAGE OPERATING L.P. )  
AND BRIGHT'S PROPANE SERVICE, INC. FOR )  
APPROVAL OF TRANSFER AND ACQUISITION OF )  
ASSETS AND CERTIFICATES OF PUBLIC CONVENIENCE )

CASE NO.  
2007-00494

**JOINT APPLICANTS' RESPONSE TO COMMISSION  
STAFF'S FIRST DATA REQUESTS**

1. Paragraph 5 of the application states that the purchase price of the assets of Bright's Propane is \$250,000 based on "assets used in operation and estimated current assets excluding cash as well as consideration for the non-compete agreement." The application includes no purchase/sales agreement governing the proposed transaction and, likewise, does not include the referenced non-compete agreement.
  - a. Does a written agreement exist which governs the terms of the proposed sale?
  - b. Is there a written non-compete agreement?
  - c. If either such agreement exists, provide it.
  - d. If no such agreements exist, provide the terms of the proposed transaction and explain how such terms were negotiated and agreed upon.

**RESPONSE:** Please see attached Exhibit 1.

2. Provide current financial statements (at a minimum, a balance sheet and income statement for a period ending not more than 90 days prior to the application date) for Bright's Propane and provide the calculation of any gas plant acquisition adjustment that will result from the proposed sale.

**RESPONSE:** Please see attached Exhibit 2.


3. Paragraph 6 of the application states that Heritage will adopt Bright's Propane's currently approved rates and tariffs. If the transaction is approved, does Heritage plan to file for approval of a rate adjustment during its first year of operation?

**RESPONSE:** No, except that Heritage will implement the purchased gas adjustment clause as provided by tariff.

4. State whether Heritage has any ownership interest or experience in operating distribution and/or pipeline systems. If yes, state where the operations are located and explain whether the operations are under the jurisdiction of any regulatory agency.

**RESPONSE:** Heritage operates no distribution systems and has no systems that are rate-regulated. Heritage has ownership interest and experience in operating pipeline systems. Please see the attached Exhibit 3 listing its OPS accounts and the Kentucky and surrounding states OPS accounts.<sup>1</sup> The OPS accounts are subject to the U.S. Department of Transportation. The safety pipeline regulations which Heritage Operating L.P. OPS accounts are subject to require operators of LP gas systems to deliver gas safely and reliably to customers, provide training and written instructions for employees, and establish written procedures to minimize the hazards resulting from LP gas pipeline emergencies and to keep records of inspection and testing. Reports must be filed annually with the US DOT Office of Pipeline Safety. Attached as Exhibit 4 is DOT's Pipeline and Hazardous Materials Safety Administration's contact personnel including those states with certified programs.

Respectfully submitted,

  
Helen C. Helton  
TILFORD DOBBINS ALEXANDER  
BUCKAWAY & BLACK, PLLC  
1400 One Riverfront Plaza  
401 West Main Street  
Louisville, Kentucky 40202  
(502) 584-1000  
[hhelton@tilfordlaw.com](mailto:hhelton@tilfordlaw.com)

Counsel for Bright's Propane Service, Inc.

Deborah T. Eversole  
STOLL KEENON OGDEN, PLLC  
2000 PNC Plaza  
500 West Jefferson Street  
Louisville, Kentucky 40202  
(502) 568-5770  
[Deborah.Eversole@skofirm.com](mailto:Deborah.Eversole@skofirm.com)

Counsel for Heritage Operating L.P.

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<sup>1</sup> The Kentucky account is not metered but the gas is sold directly to the property owner.

DEC-19-2007 13:16

P.03/03

**CERTIFICATION**

The undersigned, JOHN N. BRIGHT, being first duly sworn, states that he is VICE PRESIDENT of Bright's Propane Service, Inc., and certifies that he supervised the preparation of the foregoing responses and that the responses are true and accurate to the best of his knowledge, information and belief formed after a reasonable inquiry.

John N. Bright


Subscribed and sworn to before me, this 19<sup>th</sup> day of December, 2007.

Connie T. Sims  
Notary Public

My Commission expires 103-09.

**CERTIFICATION**

The undersigned, Steven T. Monahan, being first duly sworn, states that he is Vice President / Regional Mgr. of Heritage Operating, L.P., and certifies that he supervised the preparation of the foregoing responses and that the responses are true and accurate to the best of his knowledge, information and belief formed after a reasonable inquiry.



Subscribed and sworn to before me, this 19<sup>th</sup> day of December, 2007.

  
Notary Public

My Commission expires 12/10/09.

## CERTIFICATE OF SERVICE

It is hereby certified that this 21<sup>st</sup> day of December, 2007, I have served the foregoing by

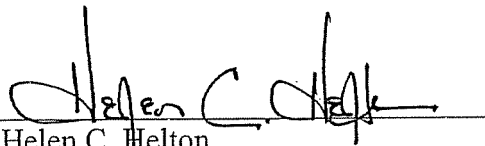
U.S. Mail, postage prepaid, upon the following:

Public Service Commission  
211 Sower Boulevard  
Frankfort, Kentucky 40602-0615

Office of the Attorney General  
700 Capitol Avenue, Suite 118  
Frankfort, Kentucky 40601

Deborah T. Eversole  
Stoll Keenon Ogden, PLLC  
2000 PNC Plaza  
500 West Jefferson Street  
Louisville, Kentucky 40202-2874  
Counsel for Heritage Operating L.P.

Bright's Propane Service, Inc.  
4660 U.S. 150 West  
Stanford, Kentucky 40484

  
Helen C. Helton



**AGREEMENT FOR PURCHASE  
AND SALE OF ASSETS**

THIS AGREEMENT is made this 16th day of November, 2007, by and between BRIGHT'S BOTTLE GAS CO., a Kentucky corporation ("BBG") and BRIGHT'S PROPANE SERVICE, INC., a Kentucky corporation ("Service") (BBG and Service are hereinafter collectively referred to as the "Sellers") and HERITAGE OPERATING, L.P., a Delaware limited partnership (hereinafter referred to as "Buyer"), and each of THOMAS B. BRIGHT, SR. and JOHN N. BRIGHT (hereinafter collectively referred to as the "Owners").

RECITALS:

A. Sellers own and operate a business engaged in the retail sales of propane gas and related products and services (the "Operations") in Burgin and Waynesburg, Kentucky (collectively, the "Plant Facilities"). Sellers use the Plant Facilities to sell and distribute LP-gas products and related services in the areas surrounding the Plant Facilities to a number of individuals and entities (the "Customers"). Sellers desire to sell all of the assets used in the Operations other than the "Excluded Assets".

B. Buyer wishes to purchase such assets used in the Operations upon the terms and conditions set forth herein.

NOW, THEREFORE, the parties hereto agree as follows.

1. PURCHASE AND SALE OF ASSETS. Sellers will sell and Buyer will purchase, effective upon the Closing, all the property and rights which are used in the Operations consisting of, but not limited to, (i) [REDACTED], (ii) [REDACTED], (iii) motor vehicles, (iv) miscellaneous operating supplies, office equipment, tools and other related equipment, (v) [REDACTED] (the "Real Property"), (vi) [REDACTED] ("Leases"), (vii) [REDACTED] ("Contracts"), (viii) [REDACTED], goodwill, trade names (including "Bright's Bottle Gas" and "Bright's Propane"), phone numbers, post office box numbers, (ix) Sellers' accounts receivable in accordance with Section 3 ("Accounts Receivable"), and (x) all inventories of propane gas ("Propane Inventory") and of new and saleable hardware, appliances, fittings, and related items held for sale to Customers (the "Hardware"), most of which are listed on the attached Schedules 1(i) through 1(x), excepting therefrom the property described on Schedule 1(xi) (the "Excluded Assets") (all of such assets to be purchased are referred to collectively as the "Property").

2. PURCHASE PRICE. The purchase price for all of the Property other than the Hardware and the Propane Inventory (the "Purchase Price") [REDACTED] FIVE THIRTEEN 2,500,000.00 2,300,000.00 for all of the Property adjusted as follows:

2.1. Inventory.

(a) Propane Inventory. As of Closing, an inventory of Propane Inventory shall be conducted jointly by the parties and the value of such Propane Inventory

Hardware Inventory. An inventory of the Hardware shall be conducted jointly by the parties as of Closing and the value of such Hardware, as agreed, shall be paid by Buyer to Sellers within twenty (20) days following the Closing. The Hardware consisting of new and saleable merchandise

2.2. Customer Tanks Acquired Since August 24, 2007.

2.3. Adjustment for Taxes, Utilities, Accrued Vacation, Rents, Customer Deposits, Credit Balances and Other Prorations. The parties will calculate and prorate, as of the day of the Closing, all taxes (other than taxes measured by revenues or income) with property taxes, if not assessed for the current year, calculated on a calendar basis based on the prior year's assessment, which are attributable to the Property purchased hereunder. Sellers shall be responsible for the charges attributable to the period through Closing and Buyer for periods thereafter. All sales, use or other transactional taxes imposed on the transfer of any of the Property shall be charged to the Sellers and if payable by the Buyer shall be deducted from the Purchase Price, and unless the same are so deducted shall be and remain the responsibility of the Sellers and Sellers shall hold Buyer harmless therefrom.

Buyer will give the Sellers credit for any transferred utility deposits. If utility charges are not available as of the day of the Closing, they shall be prorated and paid upon their receipt, and each party shall cooperate in the transfer of ownership and contracting for such services.



[REDACTED]

3. ACCOUNTS RECEIVABLE. Schedule 1(ix) identifies all of the Sellers' Accounts Receivable that are outstanding for 180 days or less. [REDACTED]

<u>Period</u>	<u>Percent of Account</u>
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

[REDACTED]

[REDACTED]

4. PAYMENT OF PURCHASE PRICE. [REDACTED]

4.1. Payment in Cash at Closing. [REDACTED]

[REDACTED] and the Environmental Holdback of Section 4.3 [REDACTED]

4.2. Holdback and Payment of Sums Into Escrow Holdback Amount. [REDACTED]

[REDACTED]

4.3. Environmental Holdback and Payment of Environmental Holdback.

[REDACTED]

5. VERIFICATION OF CUSTOMER STORAGE TANKS.

5.1. Count of Customer Storage Tanks.

[REDACTED]

5.2. Shortage of Tanks.

[REDACTED]

5.3. Proof of Ownership.

[REDACTED]

[REDACTED]

6. NO ASSUMPTION OF LIABILITIES. Buyer shall assume no liabilities of Sellers, except those described in Schedule 6 hereto (the “*Assumed Obligations*”).

7. REPRESENTATIONS AND WARRANTIES OF SELLERS AND THE OWNERS. As additional consideration for the transactions contemplated herein, Sellers and the Owners jointly and severally make the following representations, warranties, and covenants, each of which is deemed by the parties to be material and shall survive the Closing.

7.1. Corporate Standing, Powers, Authorizations and Non-Violations. Each Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of Kentucky and is qualified to do business in each state where the Operations are conducted, has full corporate power to own its properties and to carry on the Operations as now being conducted, and has full corporate power to execute, deliver, and perform this Agreement, and has obtained all corporate authorizations and any other approvals or consents necessary for the execution and delivery of this Agreement and the consummation of the transactions contemplated hereunder without violation of any agreement or order to which such Seller or its property is subject, including, without limitation, the approval of its board of directors and its stockholders.

7.2. Marketable Title/Condition. Except for those liens or mortgages that are intended to be paid with the Purchase Price and released at Closing, Owners and/or Sellers have good and marketable title to all of the Property to be purchased by Buyer hereunder, free and clear of any mortgage, pledge, lien, conditional sales agreement, lease [REDACTED]

[REDACTED] judgment, or other claim, charge, or encumbrance of any kind or character, except for liens for current property taxes not delinquent, the materiality of which does not impair marketability. The Real Property (i) has all necessary access to public roads, electricity, water and other utilities used and necessary in the Operations, (ii) is not subject to any special assessment, condemnation or eminent domain proceeding, (iii) is not subject to any agreement that would preclude the transfer to the Buyer or the continued Operations by the Buyer thereon, (iv) and all improvements constructed thereon are within the boundaries thereof, do not encroach on any other parcel of adjacent real estate and, where appropriate, are set back from the boundaries to comply with all applicable codes and regulations covering the Operations, and (v) no structure primarily located on another parcel of real property encroaches thereon.

7.3. Tangible Personal Property and Computer Operating Systems. All tangible property being transferred to Buyer hereunder is in good operating condition and is suitable for its current use and, where appropriate, such property was in compliance with, at the time of its installation (i) the rules and regulations of the applicable authorities for the storage and handling of propane, (ii) with the laws of the Commonwealth of Kentucky (including, but not limited to, bona fide valid data plates affixed to all bulk storage tanks, and location and placement of all tanks on the Real Property in relation to the property lines and the surrounding areas), and (iii) the requirements and standards as promulgated by the United States Department of Transportation for LP gas products. All the property being transferred (including, without limitation, bulk and Customer Tanks and vehicles and their installation) complied at the time of

purchase with all relevant governmental codes and good operating practices and safety standards in the propane business and the Commonwealth of Kentucky. Except as set forth on Schedule 7.3, all computer operating systems and software utilized in the Operations are owned and/or duly licensed from their owner and are freely transferable to the Buyer at no cost.

7.4. Legal or Administrative Liability. There is no suit, action, arbitration, or legal, administrative, or other proceeding, or governmental investigation pending or to the knowledge of any Seller or any Owner threatened against any Seller or any Owner or affecting any Seller or any of its assets which relates to the Operations, except as set forth in Schedule 7.4 attached hereto, all of which litigation or claims will be defended by Sellers or their insurance companies, and liability in respect of which is expressly not assumed by Buyer and against which each Seller indemnifies and holds harmless Buyer. No Seller has received any notice that it is under investigation with respect to any alleged violation of any provision of federal, state, local law or administrative regulations with respect to the Operations. To the best of Sellers' and Owners' knowledge, no Seller is in default with respect to any order, writ, injunction, or decree of any federal, state, local, or foreign court, department, agent, or instrumentality.

7.5. No Violation of Governmental Regulations. To the best of Sellers' and Owners' knowledge the Operations and the Property have not been, and were not prior to the day of the Closing, conducted in any material violation of any statute, law, ordinance, or regulation of any governmental entity. The Real Property is zoned and permitted for its current use and each Seller is in compliance with all zoning laws and any applicable permit. The current uses of the real estate upon which the Plant Facilities are located are not nonconforming or special uses or special exceptions, which uses could be terminated upon the sale of the Operations to the Buyer; the current uses and improvements at the Plant Facilities are not "grandfathered" under any previous zoning laws or ordinances; and neither Seller has any knowledge of any contemplated changes under current zoning classification which would adversely affect the Operations. Neither Seller is and has not in the past been in violation of, or charged with, convicted of or investigated for any violation of any federal, state or local environmental law or regulation by any court, governmental body or agency with respect to the Real Property or in its Operations, nor, to the best of Sellers' and Owners' knowledge, except as disclosed on Schedule 7.5, does any environmental condition exist on any portion of the Real Property that would likely give rise to a claim that any Seller is in violation of any such federal, state or local law, rule or regulation; there have been no disposals, releases of hazardous substances, materials or wastes, or pollutants or contaminants, from, in or under any of the Real Property. For purposes of this Agreement, the terms "release" and "hazardous substances" shall have the definitions assigned thereto by the Federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601, *et seq.*, as amended ("CERCLA"). To the best of Sellers' and Owners' knowledge, during the time Sellers owned the Real Property, there (i) are presently no tanks for storage of petroleum products or other material (other than propane inventory) located on the Real Property; (ii) have been no, nor are there now any, electrical transformers or other equipment containing PCBs located on or under the Real Property; (iii) have been no, nor are there now any drums, cans, canisters, or containers buried underground located on the Real Property; (iv) have been no, nor are there now any, wastes buried underground on the Real Property; (v) has been no, nor is there now any, asbestos of any type or character located on the Real Property; (vi) is no contamination of soil, ground water or surface water on or under the Real Property; (vii) is no portion of the Real Property that is or has been on any list prepared by

any federal, state or local governmental body or agency as requiring remedial environmental action; (viii) are no environmental studies or reports referring or relating to the Real Property other than the report referenced on Schedule 7.5, and (ix) has been no release of any hazardous substance, material or waste, or pollutants or contaminants on, in, from or under any property adjacent to the Real Property.

7.6. Insurance and Workers' Compensation. With respect to the Operations, Sellers have had continuously in force policies of liability insurance for the 3-year period prior to the Closing, in the amount of [REDACTED] and workers' compensation insurance coverage in compliance with the minimum standards of the state(s) where the Operations are conducted. True and complete copies of such policies and a listing of all claims Sellers have made over the past three (3) years and all workers' claims made or being paid during the past three (3) years have been supplied to Buyer and certificates reflecting such coverage are attached hereto as Schedule 7.6. All of such liability policies provide insurance on an "occurrence" basis with respect to all risks normally insured against by companies similarly situated. There are presently no existing conditions, claims or injuries to any current employee that will rise to any claims under the workers' compensation laws.

7.7. Ordinary Course of Business. The Operations have been conducted and the Property has been operated and maintained by Sellers in accordance with standards of operation and maintenance generally recommended in the propane industry. Except as set forth on Schedule 7.7, [REDACTED]

7.8. Taxes and Employee Pension and Profit Sharing Plans. To the best of Sellers' and Owners' knowledge, the Owners' and Sellers' Operations have been conducted in conformity with all applicable tax laws and all necessary returns and filings have been or will be made and the related taxes paid such that there is and will not be any liability to the Buyer for any taxes, penalties or interest for any Operations that occurred prior to the Closing. All employee benefit plans as defined in the Employee Retirement Income Security Act ("ERISA") have been operated in accordance with their plan documents and are in compliance with ERISA, the Internal Revenue Code, and any applicable state or federal law, rule or regulation as of the Closing.

7.9. Evaluation Brochure. The Buyer's acquisition of the Property hereunder is based upon materials supplied by the Sellers and included in the Evaluation Brochure attached as Schedule 7.9 which, to the extent supplied by Sellers together with the financial statements, operating statements and the other financial data prepared by the Sellers and supplied to the Buyer, are true and correct in all material respects.

7.10. Disclosure. To the best of Sellers' and Owners' knowledge, neither this Agreement nor any Schedule or Exhibit hereto nor any other document, certificate or instrument delivered to Buyer by or on behalf of Sellers and/or Owners in connection with the transactions contemplated by this Agreement contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein and therein not misleading. There is no fact known to any Seller or any Owner that is not set forth in the

Schedules of this Agreement which materially and adversely affects, nor so far as Sellers or Owners can now foresee, will materially and adversely affect, the Property.

7.11. Written Material. To the best of Sellers' and Owners' knowledge, all written materials heretofore supplied to Buyer, including, without limitation, all financial statements and revenue and expense computations included in Schedule 7.9, are correct, complete and accurate in all material respects and none of such financial computations omits any item of cost which should have been included under proper accounting practice.

## 8. COVENANTS OF SELLERS AND THE OWNERS.

8.1. Records. Sellers agree to transfer and convey to Buyer on the day of the Closing the following items, including all rights associated therewith as they relate to the Operations. Sellers, after Closing if necessary for business purposes, may have access to these records if it provides reasonable notice to Buyer of its need to review such documents:

(a) All Customer files, including, without limitation, credit, sales, tank leases, and other records in regard to the Operations.

(b) All other records in the possession of Sellers relating to the Operations, all such records shall be available to the Sellers and Owners during normal business hours.

8.2. Transfer of Real Property. At the Closing Owners and Sellers will convey to Buyer all of their right, title, and interest in and to the Owned Real Property described in Schedule 1(v) by General Warranty Deed in the form reasonably acceptable to counsel for Buyer (the "*Deed*") and a leasehold estate in the Waynesburg Plant Facility in such form as the Buyer and BBG may agree and any additional leased property utilized in the Operations described on Schedule 1(v) by assignment of lease in form satisfactory to Buyer and Sellers.

8.3. Employee Benefits and Taxes. Sellers and Owners will be responsible for and hold harmless Buyer for any claims (i) for any type of taxes owed or owing from time to time by the Sellers to any national, state or local authority and (ii) in respect of payment to employees of all salary, wages, commissions, overtime, or bonuses, plus any applicable payroll taxes and any and all other employee benefits accruing to Sellers' employees under applicable wage and hour laws and employee benefit plans of Sellers including, but not limited to, workers compensation, medical, retirement, and profit sharing, all to the day of the Closing. Unless credit is given pursuant to Section 2.3, Sellers will pay employees for their services up to the day of the Closing on the day of the Closing, including, but not limited to, wages, commissions and bonuses.

8.4. Customer Deposits and Credit Balances. If the amount of Customer Deposits, customer Credits and/or the Delivery Credit utilized to adjust the Purchase Price at Closing proves to be incorrect, the amount of any over or under credit will be paid promptly to the party benefiting from such under or over calculation or nondisclosure.

8.5. Covenant Not to Compete.

(a) Prohibited Conduct.

[REDACTED]

[REDACTED] or any plant of the Buyer or any affiliate of the Buyer

[REDACTED]

[REDACTED]


[REDACTED]

[REDACTED]

[REDACTED]

Equitable Relief.


[REDACTED]



(c) Severability. If the terms of this Section 8.5 are held by any court or agency to be unenforceable because of the period of time in which those terms remain in effect, the breadth of the activities restricted, or the breadth of the geographical area of the limitations, then, nevertheless, this section shall be deemed to have been amended to limit that time period, those activities, or that area to the longest time period, the broadest activities and the largest geographical area (not to exceed those set forth in this section) as will be enforceable.

(d) Default Remedies. In the event of a default by the Buyer of any payment due hereunder the Restricted Parties will have available all of the rights and remedies allowed by applicable law and election of any remedy shall not exclude or waive pursuit of any other remedy.

(e) Succession. In the event of the death of any Restricted Party, his or her successors or heirs at law, as the case may be, shall be entitled to the remaining payments of the deceased Restricted Party for the term specified herein upon presentation of satisfactory proof of succession. It is specifically agreed by the Restricted Parties that the Buyer may assign by transfer or operation of law the rights under this Section 8.5 to any person or entity that shall acquire the Plant Facilities for the sale and/or distribution of LPG products, except that Buyer shall absolutely and unconditionally guarantee payment of any sums due hereunder if such assignment occurs.



8.6. Change of Name. Immediately following the Closing, the Owners will cause the Sellers to change their names to a name that is not similar to such Seller and furnish evidence thereof to the Buyer.

8.7. Utility Commission Proceedings. Sellers will use their best efforts to facilitate the approval of the Kentucky Public Service Commission (the "*Commission*") to gain its approval of the transfer of the Old Bridge Piped System (the "*System*") to Buyer and the Commission's order ~~or~~ certificate of {convenience and necessity?} allowing the Buyer to operate the System subject to the Commission's authority.

9. REPRESENTATIONS, WARRANTIES AND COVENANTS OF BUYER. As additional consideration for the transactions contemplated herein, Buyer makes the following representations, warranties and covenants, each of which is deemed by the parties to be material and shall survive the Closing:

9.1. Organized and Good Standing. Buyer is a limited partnership duly organized and validly existing in good standing under the laws of Delaware and qualified to



transact business in the State of Kentucky, has full power to own its property and to carry on its business as now being conducted, is licensed and qualified, and has full power to execute, deliver, and perform this Agreement.

9.2. Authorizations. Buyer has obtained all necessary partnership authorizations and approvals and the approval of the Kentucky Public Service Commission for Buyer's operation of the Old Bridge Subdivision System (the "*Commission Approval*") for the execution and delivery of this Agreement and the consummation of the transactions contemplated hereunder.

~~\_\_\_\_\_ Employees. It is the Subject to \_\_\_\_\_ intention to normal hiring procedures, the Buyer will \_\_\_\_\_ full time \_\_\_\_\_~~

10. INDEMNIFICATION. The parties hereto agree as follows regarding indemnification of each other concerning claims, actions, or proceedings arising from this Agreement.

10.1. Indemnification of Buyer. For a period of two (2) years after the date of execution of this Agreement, Sellers and the Owners shall jointly and severally indemnify and hold Buyer harmless from and against any loss, cost, expense, or other damage (including, without limitation, reasonable attorneys' fees and expenses) (collectively, "*Damage*") resulting from, arising out of, or incurred with respect to, or (in the case of claims asserted against Buyer by a third party) alleged to result from, arise out of, or have been incurred with respect to:

- (i) the falsity or the breach of any material representation or warranty made by Sellers and/or the Owners herein or in any Schedule hereto;
- (ii) the breach of any material covenant or agreement made by Sellers and/or the Owners herein that is not cured within thirty (30) days of written notice of such breach from Buyer to Sellers and/or Owners (or if such cure cannot reasonably be performed in thirty (30) days, then Sellers and/or Owners have begun such cure within said thirty (30) days) and continue to diligently proceed to cure the same;
- (iii) any debt, obligation, contract, or liability of Sellers asserted against and/or satisfied by Buyer which is not expressly assumed by Buyer;
- (iv) the Sellers' conduct of its business and the Operations through the end of the business day prior to the Closing date, other than any Assumed Obligations;
- (v) any claim or litigation listed on Schedule 7.4; and
- (vi) any liability arising from the conditions described or arising from the matters disclosed on Schedule 7.5.

10.2. Indemnification of Sellers. Buyer shall indemnify and hold Sellers and the Owners harmless from and against any Damage resulting from, arising out of, or incurred with respect to, or (in the case of claims asserted against Sellers and the Owners by a third party) alleged to result from, arise out of, or have been incurred with respect to:

- (i) the falsity or the breach of any material representation or warranty made by Buyer herein;
- (ii) the breach of any material covenant or agreement made by Buyer herein that is not cured within thirty (30) days of written notice of such breach from Sellers and/or Owners to Buyer (or if such cure cannot reasonably be performed in thirty (30) days, then Buyer has begun such cure within said thirty (30) days) and continue to diligently proceed to cure the same;
- (iii) any debt, obligation, contract, or liability of Sellers asserted against and/or satisfied by Sellers which is expressly assumed by Buyer hereunder; and
- (iv) the conduct of business by Buyer using the Property as of the date of Closing and thereafter.

10.3. Notice of Claims. The party seeking indemnification (the “*Indemnified Party*”) agrees to give the party from whom indemnification is sought (the “*Indemnifying Party*”) timely notice of any claim with respect to which the Indemnifying Party has agreed to indemnify the Indemnified Party under this Section 10. Upon request, the Indemnified Party shall give the Indemnifying Party access to such information possessed by the Indemnified Party as the Indemnifying Party reasonably requests relating to such claim. The Indemnified Party may initially undertake the defense of any third party claim until the Indemnifying Party has acknowledged in writing that the Indemnifying Party is indemnifying the Indemnified Party with respect to any third party claim, whether or not involving litigation, at which point the Indemnifying Party will be entitled to assume the defense of any such claim; provided that the Indemnified Party may, at its election, participate (at its own expense) in such defense. At the Indemnifying Party’s reasonable request, the Indemnified Party will cooperate with the Indemnifying Party in the preparation of any such defense if the Indemnifying Party reimburses the Indemnified Party for any expenses incurred in connection with such request. The Indemnifying Party will not settle any such claim for consideration other than money without the prior written consent of the Indemnified Party, which consent shall not be unreasonably withheld.

10.4. Payment. At any time that a claim is made under this Section 10 which alleges that any Seller has liability therefor, the Buyer may hold the amount of any such claim held pending the resolution of such claim. The party seeking indemnification shall be entitled to immediate payment in cash upon final resolution of the primary claim.

## 11. DAY OF THE CLOSING AND CLOSING PROCEDURE.

11.1. Closing Date. Consummation of the purchase and sale contemplated by this Agreement (the “*Closing*”) [REDACTED]

November 16, 2007, 200

or at such later date, time, or place as Buyer and Sellers shall mutually agree.

11.2. Delivery of Documents. At the time of Closing on the day of the Closing Sellers shall deliver to Buyer the documents described in Section 12.1, and Buyer shall deliver to Sellers the documents and money described in Section 12.2.

11.3. Delivery of Assets; Risk of Loss and Business Transfer. Delivery of possession of the Property purchased hereunder and the Closing shall be deemed to have occurred at the time of

## 12. INSTRUMENTS OF CONVEYANCE AND CLOSING DOCUMENTS.

12.1. Sellers' Documents. Sellers and the Owners, as the case may be, shall deliver to Buyer at the time of Closing on the day of the Closing the following documents:

(a) A bill of sale or other instruments of transfer to Buyer for the personal property and goodwill described in this Agreement in a form reasonably satisfactory to Buyer.

(b) Vehicle title certificates or other evidence of ownership of motor vehicle equipment described in Section 1(iii) duly assigned to Buyer together with such additional transfer documents as the laws of the state of their registry may require.

(c) Assignment of any Contracts and Leases in a form reasonably satisfactory to Buyer assigning to Buyer the benefits of the Contracts and Leases not otherwise conveyed by the Bill of Sale.

(d) Commitments for policies of title insurance for each parcel of the Owned Real Property, with all exceptions cleared, in form and substance satisfactory to Buyer's counsel, insuring the title to the Owned Real Property owned in fee

(e) Certified copies of corporate resolutions of Directors and Stockholders authorizing the entry into this Agreement by each Seller and the consummation of the transactions contemplated hereby.

(f) The Deed for all the Owned Real Property owned in fee by BBG or the Owners.

(g)

(h) A certificate of good standing for each Seller from the Kentucky Secretary of State.

(i) Copies of Termination Statements or payoff letters for the UCC filings listed on Schedule 12.1(j) and the release of any mortgage on the Real Property being conveyed by the Deed.

(j) The Commission Approval.

(k) The agreements of the Owners to sell their personal goodwill associated with the Operations for the aggregate sum of \$200,000.00 (the "Goodwill Agreements").

(l) ~~(k)~~ Such other documents as are reasonably requested by Buyer.

12.2. Buyer's Documents. At the time of Closing on the day of the Closing, Buyer shall deliver to Sellers the following:

(a) A certified copy of resolutions duly adopted by the Board of Directors of Buyer's general partner approving the execution and delivery of this Agreement and authorizing all necessary or proper corporate action to enable Buyer to comply with the terms of this Agreement.

[REDACTED]

(c) The Commission Approval.

(d) Payment for the Goodwill Agreements.

(e) ~~(d)~~ Such other documents as are reasonably requested by Sellers.

12.3. Finder's or Broker's Fee. Buyer and Sellers each individually represent that, [REDACTED]

[REDACTED] and at Closing they will not have any liability to nor owe any fee or compensation to any agent, finder, or broker, either in the nature of a finder's fee or otherwise in connection with the subject matter of this Agreement and each agrees to indemnify and hold the other harmless against any liability, damages, costs or expense incurred by reason of its breach of the foregoing representation.

12.4. Sales or Transfer Taxes or Fees. Any sales or use tax, documentary stamp, transfer tax, intangible tax, and any other taxes, charges or fees resulting from the sales and transfers contemplated hereby shall be borne by the Sellers.

12.5. Severability. If any provision of this Agreement is prohibited or unenforceable in any jurisdiction then the party that will be adversely affected thereby if the transaction is completed may, but shall not be obligated, as to such jurisdictions, such prohibitions, or such unenforceability, to complete the transfers contemplated by this Agreement without invalidating the remaining provisions hereof, and any such prohibition of

unenforceability in any jurisdiction as so waived shall not invalidate or render unenforceable such provisions in any other jurisdiction.

12.6. Notices. Any notice or other communication required or permitted hereunder shall be in writing, and shall be deemed to have been given if (i) placed in the United States mail, certified, postage prepaid, (ii) delivered to a recognized overnight courier service for next business day delivery, or (iii) if personally delivered addressed as follows:

Sellers: c/o Thomas B. Bright  
4660 U.S. Highway 150 W  
Stanford, KY 40484-8638  
Fax: 859-236-6625

Owners: c/o Thomas B. Bright  
4660 U.S. Highway 150 W  
Standord, KY 4048-48638  
Fax: 859-236-6625

with a copy to:

Tilford, Dobbins, Alexander, Buckaway & Black, PLLC  
c/o William Buckaway, Jr.  
401 W. Main St., Suite 1400  
Louisville, KY 40202  
Fax: 502-584-2318

Buyer: Heritage Operating, L.P.  
c/o Energy Transfer Partners GP, L.P.  
Attn: General Counsel  
500 Meijer Drive, Suite 200  
  
Florence, Kentucky 41042  
Fax: 859-647-8581

with a copy to:

Doerner, Saunders, Daniel & Anderson, L.L.P.  
Attn: Lawrence T. Chambers, Jr.  
320 South Boston Avenue, Suite 500  
Tulsa, OK 74103-3725  
Fax: 918-591-5360

Each of the foregoing shall be entitled to specify a different address by giving notice as aforesaid to the other.

12.7. Entire Agreement, Modification, Waiver, Headings. This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof, and supersedes all other prior agreements, understandings, negotiations, and discussions,

whether oral or written, of the parties. There are no warranties, representations, or other agreements between the parties in connection with the subject matter hereof, except as specifically set forth herein. No supplement, modification, waiver, or termination of this Agreement shall be binding unless executed in writing by the party to be bound thereby. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions hereof (whether or not similar), nor shall such waiver constitute a continuing waiver unless otherwise expressly provided. Paragraph headings are not to be considered part of this Agreement and are included solely for convenience and are not intended to be a full or accurate description of contents thereof. The parties hereto may amend or modify this Agreement in such manner as may be agreed upon by a written instrument executed by such parties. The Exhibits and Schedules referred to in this Agreement shall constitute a part of this Agreement and are incorporated as though set forth in verbatim text by this reference thereto.

12.8. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of Buyer, Owners and Sellers, and their respective successors, assigns, personal representatives, and heirs.

Allocation of Purchase Price.

12.10. Announcements. Except as required by law or regulation, prior to the Closing neither Buyer nor Sellers shall, without the consent of the other, make any public announcements or issue any press release with respect to this Agreement or the transactions contemplated thereby.

12.11. Governing Law. This Agreement shall be construed and interpreted in accordance with the laws of the State of Kentucky

(Signature Page Follows)

IN WITNESS WHEREOF, the parties hereto have hereunto subscribed their names on the day and year first above written.

BRIGHT'S BOTTLE GAS CO.

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

"BBG"

HERITAGE OPERATING, L.P.

~~By Energy Transfer Partners GP, L.P., its  
— General Partner  
By Energy Transfer Partners, L.L.C., its  
— General Partner~~  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

"BUYER"

BRIGHT'S PROPANE SERVICE, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

"SERVICE"

\_\_\_\_\_  
THOMAS B. BRIGHT, SR.

\_\_\_\_\_  
JOHN N. BRIGHT

"OWNERS"

**SCHEDULE 1(i)**

**Customer Storage Tanks and Related Equipment\***

<u>TANKS</u>	
<u>Tank Size</u>	<u>Quantity</u>
██████████	████
██████████	████
██████████████	████
██████████	████
██████████	████
██████████	████
<b>Total Tanks</b>	████

**CONSUMER CYLINDERS\***

<u>Size</u>	<u>Quantity</u>
████	████
████	████
████	████
<b>Total</b>	████

\*Including pigtails, regulators, blocks, etc.



**SCHEDULE 1(ii)****Bulk Plant Storage Tanks and Related Equipment\***

<b>Location</b>	<b>Quantity</b>	<b>Size</b>	<b>Manufacturer</b>	<b>Serial No.</b>
██████	1	██████████		
██████	1	██████████		
Old Bridge Development	1	18,000 gallons		
██████	1	██████████		
██████	1	██████████		

\*together with piers, piping, plumbing, pumps, motors, fencing, etc.

**SCHEDULE 1(iii)****Motor Vehicles] need to review and remove junk vehicles -- Tommy?]**

<b>Year</b>	<b>Make/Model</b>	<b>Vehicle I.D. No.</b>	<b>Mileage</b>
1986	Dodge Stake Truck	1B6MD34WBG5004614	
1995	Ford Bobtail	1FDXF7080SVA18379	
1992	Ford Bobtail	1FDXF70JONVA16624	
1993	Dodge Pickup	1B7JM2626PS255261	
1995	Dodge Boom Truck	1B6MF3651SS281449	
2002	Gatormade Trailer	421CB122625000083	
1989	UDT Trailer	4T5X10	
1956	Homemade Trailer	00000	
	Ditch Witch Trailer	08045	
	Brindle Trailer	00000	
1997	Ford Truck	1FDXF7085VV44013	
1999	Dodge 3500 Cab	3B6MC3651XM502203	
1999	GMC Bobtail	1GDM7H1B9XJ520371	
1998	Dodge Pickup	3B7KF26Z1WM293275	
2002	GMC Bulk Truck w/3200 gal.)	1GDM7H1E02J511769	
2004	Dodge 2500 Pickup	3D7KU26D94G133737	

**SCHEDULE 1(iv)**

Miscellaneous Office Equipment, Tools and Related Equipment

**SCHEDULE 1(v)**(Page 1 of 2)Real Property**Owned Real Property**

Tract I – A certain tract or parcel of land lying in Burgin, Mercer County, Kentucky, on Brook Street, BEGINNING t the edge of Brook Street and running with the canning factory lot in a northerly direction 208 feet to corner of W. B. Holcomb property; thence with Holcomb's line in a westerly direction 104 feet; thence in a southerly direction 208 feet; thence with edge of Brook Street to point of beginning, containing approximately one-half acre, more or less.

Tract II – [TO COME]

Tract II – BEGINNING at an iron pin, corner to Merriman and Brook Street; thence along the property line of Merriman, North 19° 19' 43" East, 215.33 feet to an iron pin, corner to VanArsdale; thence with the line of VanArsdale, South 73° 22' 13" East, 219.82 feet to an iron pin in the right of way of the Southern Railway property; thence with said right of way, South 29° 08' 03", West, 165.18 feet to an iron pin; thence South 61° 06' 03" East, 10.00 feet to an iron pin; thence South 28° 08' 26" West, 47.98 feet to an iron pin; thence South 21° feet to an iron pin; thence South 21° 04' 17" West, 21.78 feet to the tack corner to Brook Street; thence along with the North line of Brook Street North 71° 41' 56" West, 132.81 feet to the point of beginning containing 1.00± acres.

BEING a revision of the legal description of said property acquired by First Party based upon an on-site survey of Thomas E. Hines, registered land surveyor.

**Leased Plant Facility at Waynesburg**

Beginning at a steel pin with cap No. 1837 set in the east R/W of U.S. 27 also a corner of tract two; thence with east R/W of U.S. 27 the following call; thence South 8 degrees 25 minutes 14 seconds West, 254.97 feet; to a post set in concrete a corner of Douglas Padgett tract; thence with the line of Douglas Padgett tract the following calls; thence South 74 degrees 54 minutes 51 seconds East, 142.91 feet; to a steel pin with cap No. 1837 & sycamore; thence North 82 degrees 03 minutes 58 seconds East, 194.20 feet; to a steel pin with cap No. 1837 & iron post; thence North 30 degrees 37 minutes 08 seconds East 234.35 feet; to a steel pin with cap No. 1837, a corner of tract two; thence with the line of tract two the following call; thence North 81 degrees 35 minutes 39 seconds West, 416.83 feet to the point of beginning; Contains 2.123 ACRES more or less. This tract will have a 20' foot R/W easement to use the existing gravel driveway across tract two to this property; this description prepared from a physical survey conducted by Gary W. Holman, KY L.S. 1837 on 7-12-96.

This being the same property acquired by Bright's Bottle Gas Co., a Kentucky corporation, by deed dated June 20, 2002, of record in Deed Book 325, Page 494, in the Office of the County Clerk of Lincoln County, Kentucky

[TO COME]

**SCHEDULE 1(v)****(Page 2 of 2)****Real Property****Side Track**

RE: Railroad Agreement between the Cincinnati, New Orleans and Texas Pacific Railway Company and Thomas B. Bright (SEE ASSIGNMENT ATTACHED HERETO)

By Agreement dated May 1, 1956, between the Cincinnati, New Orleans and Texas Pacific Railway Company and Thomas B. Bright, a license was granted to Bright to construct, maintain and use a siding track upon the northwesterly side of the right-of-way of the railway company for its main line running between Cincinnati and Chattanooga at Burgin, Kentucky, for an unloading pipe together with the right to unload tank cars on the railway company's Track No. 109-12 as supplemented by Agreement dated November 9, 1970 and further modified by Agreement dated April 25, 1974 to increase annual rental from \$15.00 to \$100.00 terminable on thirty (30) days' written notice.

Pursuant to a letter dated January 25, 1990 by the Norfolk Southern Corporation, successor to the Cincinnati, New Orleans and Texas Pacific Railway Company, the License Agreement was terminated effective February 25, 1990.

Even though the termination letter was given, there has been no attempt by the railway company to remove the side track and it has continued to deliver tank cars filled with propane for delivery to Bright's Bottle Gas Co. (some 300 tank cars since February 1990). Additionally, both the railroad and the state fire marshal have required Bright's Bottle Gas Co. to perform maintenance operations to the side track and otherwise maintain it in good working order and repair which it has done.

The use of the side track by Bright's Bottle Gas Co. has continued continuously and uninterrupted since February 25, 1990 up to the present time which period is in excess of fifteen (15) years, the period of limitation involving claims against real estate in the State of Kentucky thereby creating (in the opinion of this writer) a prescriptive right to use the side track for the purposes as originally intended.

[TO COME]

**Old Bridge Development**

All rights under Agreement dated October 27, 1986 between BBG and Old Bridge, Inc. to operate and occupy property at Old Bridge Subdivision.

**SCHEDULE 1(vi)**

Customer Tank Leases



**SCHEDULE 1(vii)**

Contracts with Customers



**SCHEDULE 1(viii)**

Customer Lists and Records, Goodwill, Trade Names, Phone Numbers

Trade Name



Bright's Propane

Trademark

(as per attached letterhead)



**SCHEDULE 1(ix)**

Accounts Receivable

(Sellers to provide listing in accordance with Section 3.)

**SCHEDULE 1(ix)**

Inventories of LP Gas and of New and Saleable Hardware,  
Appliances, Fittings and Related Items Held for Sale



**SCHEDULE 1(x)****Excluded Assets****1. Owned Real Property at Waynesburg, Kentucky which is being leased to Buyer at Closing (see attached property description):**

Beginning at a steel pin with cap No. 1837 set in the east R/W of U.S. 27 also a corner of tract two; thence with east R/W of U.S. 27 the following call; thence South 8 degrees 25 minutes 14 seconds West, 254.97 feet; to a post set in concrete a corner of Douglas Padgett tract; thence with the line of Douglas Padgett tract the following calls; thence South 74 degrees 54 minutes 51 seconds East, 142.91 feet; to a steel pin with cap No. 1837 & sycamore; thence North 82 degrees 03 minutes 58 seconds East, 194.20 feet; to a steel pin with cap No. 1837 & iron post; thence North 30 degrees 37 minutes 08 seconds East 234.35 feet; to a steel pin with cap No. 1837, a corner of tract two; thence with the line of tract two the following call; thence North 81 degrees 35 minutes 39 seconds West, 416.83 feet to the point of beginning; Contains 2.123 ACRES more or less. This tract will have a 20' foot R/W easement to use the existing gravel driveway across tract two to this property; this description prepared from a physical survey conducted by Gary W. Holman, KY L.S. 1837 on 7-12-96.

This being the same property acquired by Bright's Bottle Gas Co., a Kentucky corporation, by deed dated June 20, 2002, of record in Deed Book 325, Page 494, in the Office of the County Clerk of Lincoln County, Kentucky.

**2. Real Property commonly known as Bendor Farm (see attached property description):**

BEGINNING at a P.K. Nail in the center of Tom Hackley Road in the line of Cooper (DB125 PG 413) and a new corner to other property of Bright (DB 274 PG403); thence a new line with Bright N 39 degrees 23 minutes 23 seconds W - 805.82 feet to an iron pin set, N 23 degrees 30 minutes 52 seconds E - 1218.74 feet to an iron pin set a corner to River Ridge Dev. (DB265 PG507); thence with River Ridge Dev. S 71 degrees 11 minutes 40 seconds E - 457.43 feet to an iron pin existing, S 23 degrees 54 minutes 23 seconds E, 70.64 feet to an iron pin existing and a post; thence with the right-of-way line of Tom Hackley Road a wire fence line S 21 degrees 51 minutes 58 seconds E - 1072.83 feet to a P.K. Nail in the center of Tom Hackley Road corner to Cooper; thence with Cooper S 57 minutes 30 minutes 00 seconds West - 991.33 feet to the point of beginning and containing 31.466, more or less, acres; based upon a survey completed on September 20, 1996 and performed by Larry Wesley, a registered land surveyor, of Central Kentucky Land Surveying Company, 84 Brenda Avenue, Danville, Kentucky, 40422 (a copy of which is attached hereto and made a part of this deed of conveyance);

BEING a part of the same property acquired by First Party by deed dated October 9, 1996 and of record in Deed Book 276, Page 673 in the Office of the Clerk of Lincoln County, Kentucky.

**3. Non-Operative and fuel oil vehicles:**

**SCHEDULE 2.2**

Customer Tanks Acquired Since 8/24/07



**SCHEDULE 2.3**

Delivery Credit, Deposits, Credit Balances  
to be Supplied by Sellers at Closing

**SCHEDULE 5.2**

Tank and Cylinder Values\*

<u>Size Tank (Gallons)</u>	<u>Value Each</u>
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

<u>Size Cylinder</u>	<u>Value Each</u>
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

\*Includes pigtails, regulators, blocks, etc.

**SCHEDULE 6**

Assumed Obligations

1. [REDACTED]
2. [REDACTED]
3. [REDACTED]
4. October 27, 1986 Agreement with Old Bridge, Inc.

**SCHEDULE 7.3**

Restrictions on Transfer of Computer Operating Systems and Software

NONE



**SCHEDULE 7.4**

Legal or Administrative Liability

1.



**SCHEDULE 7.5**

Environmental Conditions

[REDACTED]

following the Closing

within six (6) months

**SCHEDULE 7.6**

Insurance and Workers' Compensation

(See attached Certificate of Insurance)

**[Need current certificate of coverages)**

**SCHEDULE 7.7**

Fixed Price Contracts



**SCHEDULE 7.9**

Evaluation Brochure

(See attached materials)

**SCHEDULE 8.5(a)**

Allocation of Non-Compete Payments











<u>Name</u>	
[REDACTED]	\$60,000.00
[REDACTED]	
[REDACTED]	\$60,000.00
[REDACTED]	

**SCHEDULE 12.1(h)****UCC Filings to be Released**

<b>Debtor</b>	<b>Secured Party</b>	<b>Filing Information</b>	<b>Collateral</b>
Bright's Bottle Gas Company, Inc. P.O. Box 321 Burgin, KY 40310-0321	Farmers National Bank of Danville P.O. Box 28 Danville, KY 40423-0028	#2003-1941890-97 filed 7/22/03 with KY SOS (Lapses 7/22/2008)	All inventory, equipment, furniture, fixtures, accounts receivable, chattel paper, general intangibles, now owned or hereafter acquired; including all renewals, replacements and future purchases.

**SCHEDULE 12.9**

Allocation of Purchase Price

	
	2,300,000.00
Gas Inventory	
Merchandise Inventory	
Land and Buildings (Burgin)	
Bulk Plants	
Consumer Tanks and Cylinders	
Vehicles	
Customer List	
Office and Miscellaneous Equipment	
<b>TOTAL*</b>	<b>\$  \$2,300,000.00</b>

\*Does not include Accounts Receivable, Gas and Merchandise Inventories, or Personal Goodwill of the Owners.



**EXHIBIT 8.2**

Lease



823569.4

823569.6



HERITAGE OPERATIONS THAT SERVICE OPS SYSTEMS  
As of December 19, 2007

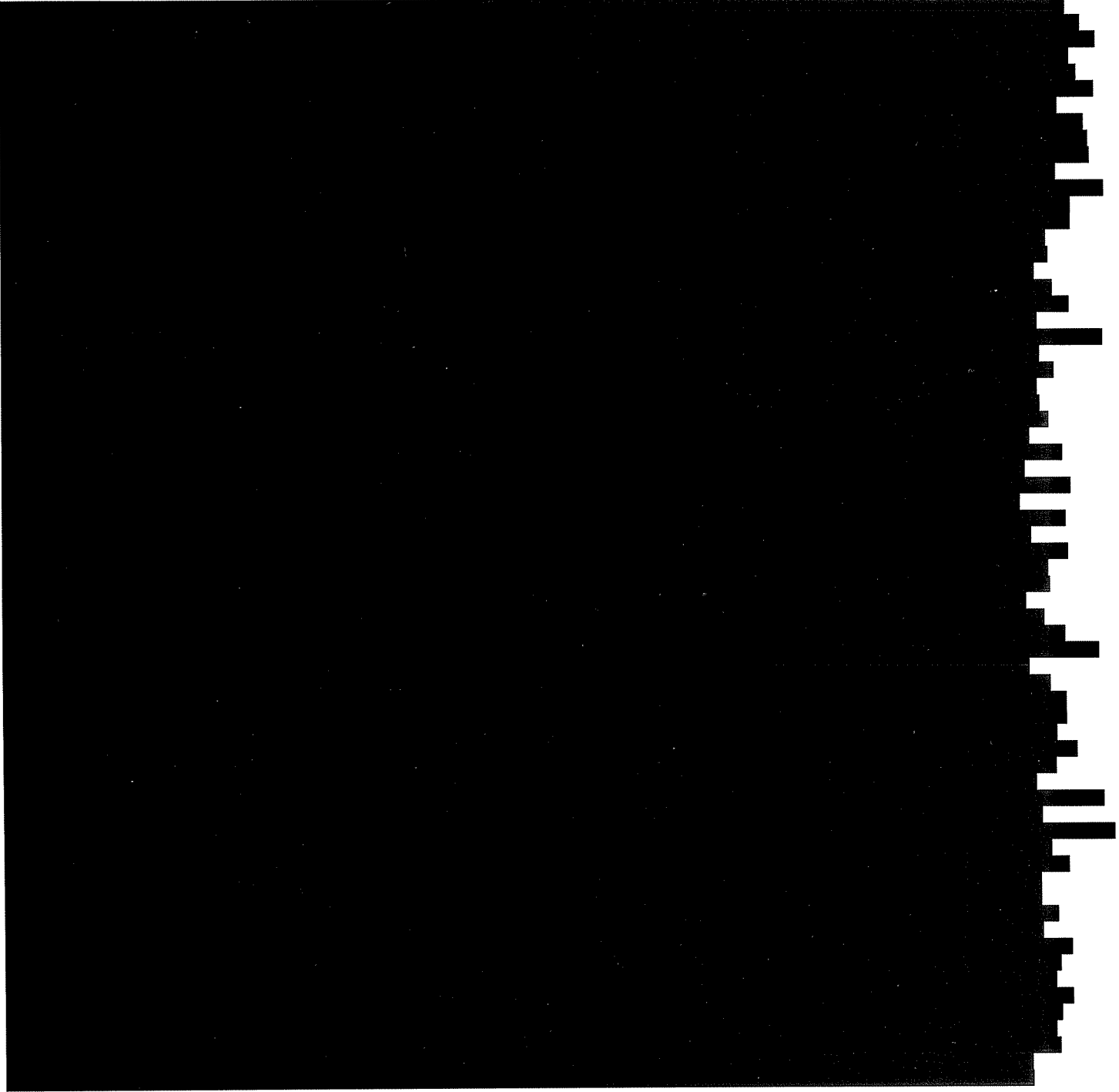
LOCATION

ADDRESS

TOWN, STATE & ZIP CODE

TELEPHONE

CONTACT

A large black rectangular redaction covers the entire table content, obscuring all data entries under the headers. Only the header text is visible at the top of the page.

LOCAL HERITAGE OPS ACCOUNTS

CUSTOMER  
NAME

STREET  
ADDRESS

TOWN

STATE

ZIP CODE

