



DRAFT

**SETTLEMENT AGREEMENT**

**THIS AGREEMENT** is made effective as of the 24 day of April, 2015.

**AMONG:**

**SPRAGUE-ROSSER CONTRACTING CO. LTD.**, a corporation incorporated pursuant to the laws of the Province of Alberta, by and through **ALVAREZ & MARSAL CANADA INC.**, in its capacity as court-appointed receiver and manager of Sprague-Rosser Contracting Co. Ltd., and not in its personal or corporate capacity ("**Contracting**")

- and -

**EDMONTON HEAVY EQUIPMENT RENTALS LTD.**, a corporation incorporated pursuant to the laws of the Province of Alberta ("**EHER**")

- and -

**SPRAGUE-ROSSER LEASING INC.**, a corporation incorporated pursuant to the laws of the Province of Alberta ("**Leasing**")

**WHEREAS**, Contracting made certain payments to NAC to allow EHER to acquire legal title to the Piling Equipment;

**AND WHEREAS**, the Receiver alleges in the Statement of Claim, *inter alia*, that the Contracting Payments made by Contracting were transfers of Contracting's property, made for no consideration, with the effect being that the Equipment, including, but not limited to, the Piling Equipment and the CAT Equipment, and any and all proceeds from the disposition thereof, are beneficially owned by Contracting;

**AND WHEREAS**, EHER and Leasing dispute the allegations contained in the Statement of Claim;

**AND WHEREAS**, in recognition of the time, cost, and uncertainty of litigating the Statement of Claim, the Parties have agreed to resolve the issues set out in the Statement of Claim, pursuant to the terms and conditions set out herein;

**NOW THEREFORE THIS AGREEMENT WITNESSES** that in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby expressly acknowledged, each of the Parties covenant and agree as follows:

## ARTICLE 1 CONSTRUCTION AND INTERPRETATION

### 1.1 Definitions

In this Agreement, including the aforementioned recitals, this Section 1.1, and any schedules attached hereto, unless the context otherwise requires, or unless otherwise defined herein, the following words and phrases shall have the following meanings:

- (a) **"A&M"** means, Alvarez & Marsal Canada Inc. in its capacity as Receiver;
- (b) **"Affiliate"** means, with respect to any Person, any other Person or group of Persons acting in concert, directly or indirectly, that controls, is controlled by, or is under common control with such Person. The term "control" as used in the preceding sentence means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person whether through ownership of more than fifty percent (50%) of the voting securities of such Person, by contract or otherwise;
- (c) **"Agreement"** means, this agreement, as the same may be amended, modified, supplemented, or restated from time to time, in accordance with the provisions hereof;
- (d) **"Applicable Laws"** means, in relation to any Party, Person, Equipment, Security Agreement, On-Lease Transactions, asset, event, or circumstance:
  - (i) statutes (including regulations enacted thereunder);
  - (ii) judgments, decrees, and orders of courts of competent jurisdiction;
  - (iii) regulations, orders, ordinances, and directives issued by Government Authorities;
  - (iv) the terms and conditions of all permits, licenses, approvals, and authorizations; and,
  - (v) common law, equity, or any other laws of any nature whatsoever;which are applicable to such Party, Person, Equipment, Security Agreement, On-Lease Transactions, asset, event, or circumstance;
- (e) **"CAT Equipment"** means, certain pieces of the Equipment, leased by EHER from Caterpillar Financial Services Limited, or any and all proceeds thereof;
- (f) **"Contracting Obligations"** means, any and all of the obligations owed by Contracting to EHER or Leasing, as the context may require, in connection with the On-Lease Transactions, the Equipment, or with respect to any other matters in relation thereto;
- (g) **"Contracting Payments"** means, the sixty-seven (67) payments made by Contracting, in connection with the On-Lease Transactions, beginning on or about

April 4, 2013, and continuing up to and including July 31, 2014, totalling approximately \$7,618,822.00, to the Secured Parties, either directly or indirectly, through EHER or Leasing, as the context may require;

- (h) **"Court"** means, the Court of Queen's Bench of Alberta;
- (i) **"EHER/Leasing Claims"** means, any and all present and future obligations, indebtedness, liabilities, covenants, agreements, claims, causes of action, and undertakings of Contracting, which may be owing or become owing, or exist, now or hereafter, to or in favour of EHER or Leasing, jointly or severally, including but not limited to any and all obligations, indebtedness, liabilities, covenants, agreements, claims, causes of action, and undertakings owed by Contracting, to or otherwise available to EHER or Leasing under, pursuant to, or relating to any such claims, causes of action, agreements, instruments, or other documents which evidence claims or relate to the Equipment, the On-Lease Transactions, the Contracting Payments, the Contracting Obligations, or which may otherwise result from the mutual business relationship between EHER or Leasing and Contracting with respect to the Equipment, the On-Lease Transactions, the Contracting Payments, or the Contracting Obligations, wheresoever and howsoever incurred or arising, whether direct or indirect, absolute or contingent, matured or not, extended or renewed, and any ultimate unpaid balance thereof;
- (j) **"Equipment"** means, any and all heavy construction equipment which EHER or Leasing may have an interest in, including, but not limited to, the Piling Equipment and the CAT Equipment, in Contracting's possession upon the commencement of the Receivership Proceedings or any and all equipment forming part of or being subject to the On-Lease Transactions;
- (k) **"Government Authority"** means, any federal, national, provincial, territorial, municipal, or other government, any political subdivision thereof, and any ministry, sub ministry, agency or sub agency, court, board, bureau, office, or department, including any government owned entity, having jurisdiction over a Party, the Equipment, the On-Lease Transactions, the Security Agreements, or any transactions, Persons, or processes contemplated by this Agreement;
- (l) **"MR LLP"** means, McLennan Ross LLP, in its capacity as counsel for EHER;
- (m) **"McCarthy"** means, McCarthy Tétrault LLP, in its capacity as counsel to the Receiver;
- (n) **"NAC"** means, North American Construction (1993) Ltd.;
- (o) **"On-Lease Transactions"** means, the transactions by which EHER or Leasing would permit Contracting to possess and make use of the Equipment for Contracting's own benefit;
- (p) **"Order"** means, any order as may be granted or pronounced by any court of competent jurisdiction;

- (q) **"Party"** means, either Contracting, EHER, or Leasing, as the context may require, and **"Parties"** means all or any combination of Contracting, EHER, and Leasing, as the context may require;
- (r) **"Persons"** means, any individual, corporation, limited or unlimited liability company, joint venture, partnership (limited or general), trust, trustee, executor, Government Authority, or any other entity capable of entering into a binding legal contract;
- (s) **"Piling APA"** means, the asset purchase agreement, dated December 13, 2013, between EHER and NAC, pursuant to which EHER purchased the Piling Equipment from NAC;
- (t) **"Piling Equipment"** means, the piling equipment conveyed by NAC to EHER pursuant to the Piling APA;
- (u) **"Receiver"** means, Alvarez & Marsal Canada Inc., in its capacity as receiver and manager in accordance with the Receivership Order;
- (v) **"Receivership Order"** means, the order issued by the Court in the Receivership Proceedings on July 31, 2014, as subsequently amended and restated on August 7, 2014, as modified or supplemented from time to time;
- (w) **"Receivership Proceedings"** means, the proceedings before the Court and identified as Court File No. 1503-04903;
- (x) **"Released Trust Funds"** has the meaning given in Section 2.2 of this Agreement;
- (y) **"Representatives"** means, with respect to any Party, its Affiliates, and the respective directors, officers, servants, agents, advisors, employees, consultants, and representatives of that Party and its Affiliates;
- (z) **"Residual Equipment Interest"** has the meaning given in Section 2.3 of this Agreement;
- (aa) **"Contracting Claims"** means, any and all present and future obligations, indebtedness, liabilities, covenants, agreements, claims, including but not limited to the claims outlined within the Statement of Claim, causes of action, and undertakings of EHER and Leasing, which may be owing or become owing, or exist, now or hereafter, to or in favour of Contracting, including but not limited to any and all obligations, indebtedness, liabilities, covenants, agreements, claims, causes of action, and undertakings owed by EHER or Leasing to or otherwise available to Contracting under, pursuant to, or relating to any such claims, causes of action, agreements, instruments, or other documents which evidence claims or relate to the Equipment, the On-Lease Transactions, the Contracting Payments, the Contracting Obligations, or which may otherwise result from the mutual business relationship between Contracting and EHER or Leasing with respect to the Equipment, the On-Lease Transactions, the Contracting Payments, the Contracting Obligations, wheresoever and howsoever incurred or arising, whether direct or indirect, absolute or contingent, matured or not, extended or renewed, and any ultimate unpaid balance thereof;

- (bb) **"Secured Parties"** means, any or all of the, arm's length, third parties who leased or sold any of the Equipment to EHER or Leasing, as the context may require, by way of the Security Agreements, and includes, but is not limited to, the following Persons: (i) Canadian Western Bank; (ii) General Electric Canada Equipment Finance G.P.; (iii) Derrick Dodge (1980) Ltd.; (iv) John Deere Financial Inc.; (v) Caterpillar Financial Services Limited; (vi) Komatsu International (Canada) Inc.; and (vii) North American Construction (1993) Ltd.;
- (cc) **"Security Agreements"** means, any and all of the purchase or lease agreements, including, but not limited to, the Piling APA, entered into between any of the Secured Parties and EHER or Leasing, as the context may require, with respect to the Equipment;
- (dd) **"Statement of Claim"** means, the Statement of Claim, filed with the Court on April 1, 2015, by Contracting, as plaintiff, against EHER and Leasing, as defendants, commencing the proceedings under court file number 1503-04903; and,
- (ee) **"Trust Funds"** means, the funds, totaling Cdn.\$811,638, currently held in trust by MR LLP in connection with the Equipment.

## **1.2 Construction**

In this Agreement, unless otherwise expressly stated:

- (a) the headings in this Agreement are inserted for convenience of reference only and shall not affect the meaning, interpretation, or construction of this Agreement;
- (b) whenever the singular or masculine or neuter is used in this Agreement, the same shall be construed as meaning plural or feminine or referring to a body politic or corporate, and vice versa, as the context requires;
- (c) the words "hereto", "herein", "hereof", "hereby", "hereunder", and similar expressions refer to this Agreement and not to any particular provision of this Agreement;
- (d) reference to any Article, Section, or Schedule means an Article, Section, or Schedule of this Agreement unless otherwise specified;
- (e) if any provision of a Schedule hereto conflicts with or is at variance with any provision in the body of this Agreement, the provisions in the body of this Agreement shall prevail to the extent of the conflict; and
- (f) "include" and any derivatives thereof shall be read as if followed by the phrase "without limitation".

## **1.3 References to Agreements and Enactments**

Unless otherwise stated, references herein to any agreement, instrument, licence, or other document shall be deemed to include reference to such agreement, instrument, licence, or other document as the same may from time to time be amended, modified, supplemented, or restated; and reference herein to any enactment shall be deemed to include reference to such enactment as re-enacted, amended, or extended from time to time and to any successor enactment.

## ARTICLE 2 SETTLEMENT AND RELEASE OF TRUST FUNDS

### 2.1 General

Notwithstanding the terms of any agreements, instruments, or other documents giving rise to the EHER/Leasing Claims, the Contracting Claims, or the Trust Funds, the Parties hereby agree that any and all of the Parties' rights, including the enforcement, payment, priority, allocation, or any and all rights, claims, or interests, associated with the Contracting Claims, the EHER/Leasing Claims, and the Trust Funds, as between the Parties, shall be governed and determined in accordance with the terms of this Agreement.

### 2.2 Released Trust Funds

EHER hereby covenants, agrees, and consents to the payment of the amount of Cdn.\$527,564.70 from the Trust Funds to be netted against EHER's 35% interest in the CAT Equipment, being Cdn.\$57,439.69, currently held by the Receiver, which, the Parties hereto agree, shall be paid by the Receiver to Contracting, resulting in a net payment of Cdn.\$470,125.01 being made from the Trust Funds (the "**Released Trust Funds**"), to Contracting. EHER hereby irrevocably authorizes and directs MR LLP to pay the Released Trust Funds, from the Trust Funds, directly to the Receiver.

### 2.3 Settlement of Residual Equipment Interests

EHER, Leasing, and Contracting hereby acknowledge, covenant, and agree that any and all of EHER's and Leasing's interest in the Equipment or any proceeds thereof, after any and all of the valid, perfected, and secured obligations owing to the Secured Creditors, pursuant to the Security Agreements, with respect to a given piece of Equipment, have been repaid (the "**Residual Equipment Interest**"), shall be divided between the Parties, in the following manner:

- (i) 65% of the Residual Equipment Interest, or any proceed derived thereof, shall be paid, distributed, or retained by the Receiver; and,
- (ii) 35% of the Residual Equipment Interest, or any proceeds derived thereof, shall be paid, distributed, or retained by EHER and/or Leasing, whichever is applicable.

### 2.4 Acknowledgement and Support of Proposed Cost Allocation

EHER and Leasing hereby covenant, agree, and consent to support the Receiver in connection with any application brought by the Receiver concerning the allocation of costs to EHER, Leasing, and any or all the Secured Creditors, as long as such cost allocation is determined by EHER and Leasing to be fair and reasonable.

### 2.5 Discontinuance of Statement of Claim

Upon receipt of the Released Trust Funds, Contracting hereby covenants and agrees to discontinue the Statement of Claim on a without costs basis.

## **ARTICLE 3 SETTLEMENT AND RELEASE**

### **3.1     Release of Contracting Claims**

In consideration of the EHER's and Leasing's agreement and irrevocable direction with respect to the Released Trust Funds, in accordance with Section 2.2, and other good and valuable consideration, the receipt and sufficiency of which is hereby expressly acknowledged, Contracting, on its behalf as well as on behalf of all of its respective directors, officers, employees, agents, Representatives, successors, Affiliates, shareholders, insurers, and assigns hereby releases and forever discharges EHER and Leasing and any and all of their employees, agents, Representatives, successors, Affiliates, insurers, and assigns from any and all actions, liabilities, causes of action, claims, suits, proceedings, debts, contracts, complaints, demands, damages, interests, duties, costs, expenses, and compensation of whatsoever kind and howsoever arising, whether in law or in equity, whether at common law, under any legislation, Applicable Laws, or otherwise, whether known or unknown, and which Contracting now has or at any time hereafter can, shall, or may have, in any way resulting or arising from, or in any other way connected to, any matters associated with the Contracting Claims, the Equipment, the On-Lease Transactions, the Contracting Payments, the Contracting Obligations, this Agreement, or any matters related thereto; provided, however, that nothing herein shall release or discharge EHER and Leasing from operating in accordance with this Agreement.

### **3.2     Release of EHER/Leasing Claims**

In consideration of Contracting's release of the Contracting Claims in accordance with Section 3.1 and other good and valuable consideration, the receipt and sufficiency of which is hereby expressly acknowledged, EHER and Leasing, jointly or severally, on their behalf as well as on behalf of all of their respective directors, officers, employees, agents, Representatives, successors, Affiliates, shareholders, insurers, and assigns hereby release and forever discharge Contracting, the Receiver, and any and all of their Representatives, administrators, employees, servants, agents, counsel, insurers, successors, and assigns from any and all actions, liabilities, causes of action, claims, suits, proceedings, debts, contracts, complaints, demands, damages, interests, duties, costs, expenses, and compensation of whatsoever kind and howsoever arising, whether in law or in equity, whether at common law, under any legislation, Applicable Laws, or otherwise, whether known or unknown, and which EHER and Leasing now have or at any time hereafter can, shall, or may have, in any way resulting or arising from, or in any other way connected to, whether jointly or severally, any matters associated with the EHER/Leasing Claims, the Equipment, the On-Lease Transactions, the Contracting Payments, the Contracting Obligations, this Agreement, or any matters related thereto; provided, however, that nothing herein shall release or discharge Contracting from operating in accordance with this Agreement.

## **ARTICLE 4 COURT APPROVAL AND GENERAL**

### **4.1     Court Approval**

This Agreement is conditional on the granting of an Order by the Court approving this Agreement, on terms satisfactory to the Receiver. Such Order to, *inter alia*, authorize Contracting to complete the transactions contemplated by this Agreement and to declare that the transactions contemplated by this Agreement are not void or voidable at the instance of any Persons, including, but not limited



to, the Secured Parties, and shall not constitute nor shall be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance, or other challengeable or reviewable transaction under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B 3, as amended, or any other applicable federal or provincial legislation, and this Agreement or any actions or transactions taken therewith, shall not constitute conduct meriting an oppression remedy.

#### **4.2 Acknowledgments of the Parties**

The Parties hereby acknowledge and agree that the facts, as set out in the Recitals to this Agreement, are true and accurate in all respects and the same are expressly incorporated into and form part of this Agreement.

#### **4.3 No Waiver**

No waiver by any Party of any breach of any of the terms, conditions, representations, or warranties in this Agreement shall take effect or be binding upon that Party unless the waiver is expressed in writing under the authority of that Party and any waiver so given shall extend only to the particular breach so waived and shall not limit or affect any rights with respect to any other or future breach.

#### **4.4 Non-Merger**

The provisions contained in this Agreement shall survive the closing of the transactions contemplated hereby and shall not merge upon any transfer or other document or instrument in connection herewith. Without limiting the generality of the foregoing, the liability of any Party for any breach of any of its representations, warranties, covenants, agreements, releases, or other obligations hereunder, in accordance with its terms, as contemplated herein, shall not be extinguished or in any manner diminished by such completion.

#### **4.5 Entire Agreement**

This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof, and the Parties agree and confirm that this Agreement cancels and supersedes any prior understandings and agreements between the Parties hereto with respect to the subject matter hereof. No modification of or amendment to this Agreement shall be valid or binding unless set forth in writing and duly executed by the Parties.

#### **4.6 Notice**

Any notices or demands given under this Agreement may be delivered by courier, facsimile, or electronic mail transmission to the parties at the addresses set forth below and, where so given, shall be deemed received by the recipient on the same business day as delivered or transmitted if delivered or transmitted prior to 5:00 p.m. (MST), otherwise such notice or demand will be deemed received by the recipient on the next business day:

(a) If to Contracting

Alvarez & Marsal Canada Inc.  
400 Burrard Street  
Suite 1680, Commerce Place  
Vancouver BC V6C 3A6

Attention: Tom Powell  
Fax: (604) 639-0846  
Email: tpowell@alvarezandmarsal.com

with a copy to

McCarthy Tétrault LLP  
Suite 4000, 421 – 7<sup>th</sup> Avenue SW  
Calgary, AB T2P 4K9

Attention: Sean F. Collins/Walker W. MacLeod  
Fax: (403) 260-3501  
email: scollins@mccarthy.ca / wmacleod@mccarthy.ca

(b) If to EHER or Leasing

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Attention: •  
Fax: •  
email: •

with a copy to

- 

Attention: •  
Fax: •  
email: •

#### **4.7 Governing Law**

This Agreement shall be governed by, and construed in accordance with, the laws of the Province of Alberta and the laws of Canada applicable therein but the reference to such laws shall not, by conflict of laws rules or otherwise, require the application of the law of any jurisdiction other than the Province of Alberta. Each party hereto irrevocably attorns to the jurisdiction of the Courts of the Province of Alberta.

#### **4.8 Severability**

In the case any of the provisions of this Agreement should be invalid, illegal, or unenforceable in any respect, the validity, legality, or enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

**4.9 Further Assurances**

Each of the Parties shall from time to time and at all times on and after the date hereof, without further consideration, do and perform all such further acts and things, and execute and deliver all such further agreements, assurances, notices, releases, and other documents and instruments, at their own expense, as may reasonably be required to more fully give effect to the intent and purpose of this Agreement.

**4.10 Counterpart Execution**

This Agreement may be executed in counterparts and all executed counterparts together shall constitute one agreement. This Agreement shall be binding upon any Party upon such Party's execution and delivery of this Agreement in accordance with the terms herein.

**4.11 Electronic Execution**

Delivery of an executed signature page to this Agreement by any Party by electronic transmission will be as effective as delivery of a manually executed copy of the Agreement by such Party.

**[THE REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK]**

**IN WITNESS WHEREOF** the Parties have executed and delivered this Agreement as of the date first above written.

**SPRAGUE-ROSSER CONTRACTING CO. LTD.** by its court appointed receiver and manager **ALVAREZ & MARSAL CANADA INC.**, in its capacity as court appointed receiver and manager of all of the assets, properties, and undertakings of Sprague-Rosser Contracting Co. Ltd., and not in its personal or corporate capacity, and not in its personal capacity

Per: \_\_\_\_\_  
[Name]  
[Title]

Per: \_\_\_\_\_  
[Name]  
[Title]

**EDMONTON HEAVY EQUIPMENT RENTALS LTD.**

Per: \_\_\_\_\_  
[Name]  
[Title]

Per: \_\_\_\_\_  
[Name]  
[Title]

**SPRAGUE-ROSSER LEASING INC.**

Per: \_\_\_\_\_  
[Name]  
[Title]

Per: \_\_\_\_\_  
[Name]  
[Title]