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COURT OF QUEEN'S BENCH OF ALBERTA

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J.Romaine

JUDICIAL CENTRE

**CALGARY**

APPLICANTS

IN THE MATTER OF THE *COMPANIES'*  
*CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c.  
C-36, AS AMENDED

AND IN THE MATTER OF THE COMPROMISE OR  
ARRANGEMENT OF ENTREC CORPORATION,  
CAPSTAN HAULING LTD., ENT CAPITAL CORP.,  
ENTREC CRANES & HEAVY HAUL INC., ENTREC  
HOLDINGS INC., ENT OILFIELD GROUP LTD., and  
ENTREC SERVICES LTD.

DOCUMENT

**SECOND SUPPLEMENTAL AFFIDAVIT OF JOHN  
STEVENS (RE: CCAA TERMINATION ORDER)**

ADDRESS FOR SERVICE AND  
CONTACT INFORMATION OF  
PARTY FILING THIS DOCUMENT

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File No.: 144572.3

## AFFIDAVIT OF JOHN STEVENS

Sworn on November 16, 2020

I John Stevens, of the City of St. Albert in the Province of Alberta, **MAKE OATH AND SAY THAT:**

1. I am the Chief Executive Officer of ENTREC Corporation, Capstan Hauling Ltd., ENT Capital Corp., ENTREC Cranes & Heavy Haul Inc., ENTREC Holdings Inc., ENT Oilfield Group Ltd., and ENTREC Services Ltd. (collectively, the "**Applicants**") and I have personal knowledge of the Applicants and the matters to which I depose in this affidavit. Where I do not possess personal knowledge, I have stated the source of my information and, in all such cases, believe such information to be true.
2. Unless otherwise stated, all monetary figures in this affidavit are expressed in Canadian dollars.

### OVERVIEW

3. This affidavit is sworn in support of the Applicants' application for an order (the "**CCAA Termination Order**"), among other things:
  - (a) granting enhanced powers to the Monitor for the remainder of these CCAA proceedings;
  - (b) terminating these CCAA proceedings on the filing with the Court of a certificate substantially in the form attached as Schedule "A" to the CCAA Termination Order (the "**Monitor's Termination Certificate**") and discharging the Monitor;
  - (c) releasing all claims of third parties against:
    - (i) the Monitor and its legal counsel; and
    - (ii) the Applicants' directors and officers except for certain insured claims and claims that cannot be released under Section 5.1(2) of the CCAA;
  - (d) releasing the Court-ordered charges granted pursuant to the ARIO and other orders of this Court in these CCAA proceedings (the "**Charges**") on the occurrence of certain events, and subject to the payment of the obligations secured thereby, as follows:

- (i) with respect to the release of the KERP/KEIP Charge, the Sales Agent Charge and the Directors' Charge (each as defined in the ARIO), upon the filing by the Monitor of a certificate substantially in the form attached as Schedule "B" to the CCAA Termination Order (the "**Charge Release Certificate**");
  - (ii) with respect to the release of the Administration Charge and the Interim Lender's Charge (each as defined in the ARIO), upon the filing by the Monitor of the Monitor's Termination Certificate;
- (e) approving certain distributions to the Agent;
  - (f) approving the professional fees and disbursements of the Monitor;
  - (g) sealing certain confidential appendices to the Seventh Report of the Monitor, to be filed (the "**Seventh Report**"); and
  - (h) extending the stay of proceedings until the earlier of: (i) the filing by the Monitor of the Monitor's Termination Certificate, and (ii) February 26, 2021.
4. The Applicants initially applied for the CCAA Termination Order on October 5, 2020, expecting that the Applicants would have sold all of their assets by that time. On September 28, 2020, the Applicants filed and served court materials in support of the CCAA Termination Order.
  5. The previous transaction for the Applicants' US business was scheduled to close on September 30, 2020. Unfortunately, due to a dispute between the Applicants and the purchaser, that transaction did not close, and the Applicants adjourned *sine die* their October 5 application for the CCAA Termination Order in order to re-market their US business.
  6. On November 2, 2020, the Applicants obtained Canadian and US Court-approval of a new transaction with a new purchaser for the Applicants' US business, which transaction closed on November 6, 2020. On that same date, this Court approved, among other things, the removal of a former subsidiary of the Applicants, ENTREC Alberta Ltd., as an applicant from these CCAA proceedings and a distribution to the Agent.

7. The Applicants have now sold substantially all of their assets in both Canada and the USA. The Applicants have no remaining active operations. It is time to wind up the Applicants' estates, and the Applicants intend to do so with the CCAA Termination Order, if granted.
8. The CCAA Termination Order (if granted) enables the Monitor, through enhanced powers, to complete all of the remaining activities and take any and all other actions necessary to wind up the Applicants' estates.
9. The Agent, which will suffer a substantial shortfall, supports this application.

*Materials Previously Filed in Connection with CCAA Termination Order*

10. On September 28, 2020, I swore an affidavit in support of the Applicants' first application for the CCAA Termination Order (the "**Sixth Stevens Affidavit**"). A copy of the Sixth Stevens Affidavit (without exhibits) is attached hereto and marked as **Exhibit "A"**.
11. On September 28, 2020, I swore a supplemental affidavit to the Sixth Stevens Affidavit advising, among other things, that the Applicants' application for the CCAA Termination Order had been adjourned *sine die*.
12. I swear this affidavit as a second supplement to the Sixth Stevens Affidavit in support of the CCAA Termination Order. The purpose of this affidavit is to build on the facts set out in the Sixth Stevens Affidavit, which are not repeated here.
13. Unless otherwise stated, capitalized terms used in this supplemental affidavit are defined in the Sixth Stevens Affidavit.

**EXTENSION OF THE SUPPORT AGREEMENT**

14. On October 8, 2020, the Applicants and the Syndicate entered into a second amending agreement of the Restructuring Support Agreement under which the Syndicate agreed to continue to support these CCAA proceedings (the "**Second Amending Agreement**"). Attached hereto and marked as **Exhibit "B"**.
15. The purpose of the Second Amending Agreement is to facilitate the wind-down and termination of these CCAA proceedings.

16. Under the terms of the Second Amending Agreement, among other things, the Applicants agreed to apply for the CCAA Termination Order no later than November 30, 2020.
17. Independent counsel for the Applicants' officers and directors played an active role with negotiating the Second Amending Agreement.

## **EXPANSION OF MONITOR'S POWERS AND CCAA TERMINATION ORDER**

### *Background in respect of Application for CCAA Termination Order*

18. As described in the Sixth Stevens Affidavit, the Applicants had anticipated that by the initial return date for the application for the CCAA Termination Order (*i.e.*, October 5, 2020), the Applicants would have sold substantially all of their assets in both Canada and the United States. The Monitor distributed to the Agent the net sale proceeds following the closing of each sale transaction.
19. However, as described in previous affidavits, the original Court-approved transaction for the sale of the Applicants' US business did not close.
20. As a result of the re-marketing efforts, on November 2, 2020, the Applicants sought and obtained an order approving a transaction in respect of the Applicants' US business with a new purchaser (the "**Pro-Lift Transaction**"). The Pro-Lift Transaction closed on November 6, 2020. On November 6, 2020 and November 12, 2020, the Monitor distributed to the Agent the net sale proceeds from the Pro-Lift Transaction.
21. The Monitor continues to hold the deposit (approximately \$3.3 million) (the "**Wolverine Deposit**") paid by the purchaser in the previous US transaction ("**Wolverine**") that was terminated. The Monitor will continue to hold the Wolverine Deposit, and no amount in excess of the Wolverine Deposit, pending a consensual resolution or final judicial determination of the Wolverine Dispute (as defined below).
22. On November 2, 2020, Wolverine filed an adversary complaint in the Applicants' US Proceedings seeking, among other things, a return of the Wolverine Deposit and additional damages. A copy of Wolverine's adversary complaint is attached hereto and marked as **Exhibit "C"** (the "**Wolverine Dispute**").

23. On November 3, 2020, the US Bankruptcy Court scheduled a pre-trial for the Wolverine Dispute for January 6, 2021. The Applicants expect that the Wolverine Dispute will be addressed in the US Proceeding.

*Remaining Activities*

24. As described above, with the closing of the Pro-Lift Transaction, the Applicants have now sold substantially all of their assets. Accordingly, the Applicants now seek the CCAA Termination Order after previously adjourning the application *sine die*.
25. The activities remaining with respect to the Applicants' estates include the following (the "**Remaining Activities**"):
- (a) consensually resolve or litigate the Wolverine Dispute in the US Bankruptcy Court;
  - (b) collect outstanding accounts receivables and other proceeds from the sale of assets, and sell any remaining tangible assets;
  - (c) complete such administrative steps as are necessary or advisable to wind down each of the Applicants' estates, including, if determined appropriate, assigning the Applicants into bankruptcy;
  - (d) the filing by the Monitor of the Charge Release Certificate; and
  - (e) the filing by the Monitor of the Monitor's Termination Certificate certifying that all of the Remaining Activities have been completed and these CCAA proceedings are terminated.
26. The Applicants, in consultation with the Monitor and the Agent, have established a reserve from the proceeds of the Court-approved transactions for the sale of the Applicants' assets to, among other things, satisfy post-filing obligations, administration expenses and claims in priority to the Agent's security (if any) (the "**Reserve**").
27. In the Applicants' view, based on the Cash Flow Forecast (as defined below), the quantum of the Reserve is sufficient to complete the Remaining Activities and wind up these CCAA proceedings and the US Proceedings.
28. Under the Second Amending Agreement, the Applicants' current directors and officers are required to resign on or before the granting of the CCAA Termination Order (if

granted). Following the resignation of the Applicants' directors and officers, the Applicants will not have the management structure in place to ensure an orderly wind-up of the Applicants' CCAA proceedings. As such, the Applicants' seek an order to enhance the powers of the Monitor and terminate these CCAA proceedings.

*Enhanced Powers of the Monitor*

29. The enhanced powers of the Monitor are addressed in paragraphs 42 – 46 of the Sixth Stevens Affidavit and not repeated here.

*Release of Court Ordered Charges*

30. The CCAA Termination Order contemplates the release of the Charges upon the Monitor filing with the Court the Charge Release Certificate or Monitor's Termination Certificate, as applicable. The ARIO sets out the Charges and their relative priority as follows:
- (a) First – Administration Charge (to the maximum amount of \$750,000);
  - (b) Second - Directors' Charge (to the maximum amount of \$1,500,000);
  - (c) Third - KERP/KEIP Charge (to the maximum amount of \$1,500,000);
  - (d) Fourth – Sales Agent Charge (to the maximum amount of \$1,000,000); and
  - (e) Fifth – Interim Lender's Charge.

Charge Release Certificate

31. Subject to payment of the obligations secured thereby, the CCAA Termination Order releases the KERP/KEIP Charge, the Sales Agent Charge and the Directors' Charge upon the Monitor filing the Charge Release Certificate.
32. Amounts secured under the KERP/KEIP Charge are forecast to be paid in the week ending November 20, 2020. All amounts secured under the Sales Agent Charge have been paid.
33. With respect to the Directors' Charge, pursuant to the Second Amending Agreement, the release of such charge is contingent on the satisfaction of certain requirements set out in Section 4.1(d) of the Second Amending Agreement – namely, the granting of a

release of all claims to which the Directors' Charge applies and a recognition of such release by the United States Bankruptcy Court. The Applicants anticipate these triggering events to occur following the granting of the CCAA Termination Order (if granted).

34. In order to file the Charge Release Certificate, it contemplates the Monitor having received confirmation that (a) the Agent has consented to the filing of the certificate, (b) the requirements of Section 4.1(d) of the Second Amending Agreement have been satisfied, and (c) to the knowledge of the Monitor, all of the obligations secured by the KERP/KEIP Charge, the Sales Agent Charge and the Directors' Charge have been paid.
35. The CCAA Termination Order directs the Monitor to post an executed copy of the Charge Release Certificate on its website as soon as reasonably practical after filing.

#### CCAA Termination Certificate

36. Subject to payment of the obligations secured thereby, the CCAA Termination Order releases and discharges the Administration Charge and the Interim Lender's Charge upon the Monitor filing the Monitor's Termination Certificate.
37. In the Monitor's Termination Certificate, the Monitor certifies that (a) all of the Remaining Activities have been completed, and (b) these CCAA proceedings are terminated effective as at the date and time the certificate is filed.
38. The CCAA Termination Order authorizes and directs the Monitor to distribute the balance of the Reserve (if any) immediately prior to filing the Monitor's Termination Certificate.

#### **DIRECTORS' RELEASE**

39. The CCAA Termination Order provides for a release in favour of the Applicants' current and former directors and officers (the "**CCAA Release**") from any and all D&O Claims (as defined in the CCAA Termination Order).
40. The facts in support of the CCAA Release, including details of the scope of the CCAA Release and the efforts of and value added by the Applicants directors and officers in

these CCAA proceedings, are set out paragraphs 47 – 61 of the Sixth Stevens Affidavit and are not repeated here.

41. As set out in the Sixth Stevens Affidavit, the Applicants directors' and officers have played an important role in these CCAA proceedings. Their efforts have led to multiple going concern transactions for the Applicants' operations, preserving 131 jobs in Alberta and 69 jobs in the United States.
42. This supplemental affidavit describes additional steps the Applicants took since the Sixth Stevens Affidavit to provide further notice broadly to creditors regarding the CCAA Release.

*Notice of CCAA Release*

43. As described in the Sixth Stevens Affidavit, the Applicants have taken extraordinary efforts to give interested parties and the Service List advance notice of the Applicants' intention to seek the CCAA Release.
44. Between September 16 and 17, 2020, the Applicants initiated the mailing of a letter to all of its creditors listed on the Creditors' List, as well as current and former employees in both Canada and the United States (the "**First Letter to Creditors**").
45. In summary, the First Letter to Creditors:
  - (a) advised that the Applicants intend to seek the CCAA Release at an application before this Court scheduled for October 5, 2020;
  - (b) provided the URLs for both the Monitor's website and the website maintained by Stretto (the Applicants' approved noticing agent in the United States) for the US Proceedings and encourages the reader to visit the case websites;
  - (c) advised that the Applicants intend to seek recognition of the CCAA Release in the US Proceeding (if granted);
  - (d) invited the reader to email Mark Siry of Miller Thomson, insolvency counsel for the Applicants, if the reader wishes to be added to the Service List;

- (e) stated that the reader may wish to retain legal advice regarding their specific rights and concerns in connection with the Applicants' intended application for the CCAA Release; and
  - (f) invited the reader to contact the Monitor or the Applicants' counsel to discuss the First Letter to Creditors.
46. In the Sixth Stevens Affidavit, I stated that, as at the date of the Sixth Stevens Affidavit, Miller Thomson had received approximately twelve (12) phone calls from recipients of the First Letter of the Creditors, and none of the recipients who called expressed an intention to oppose the CCAA Release. I further stated that, as at the date of the Sixth Stevens Affidavit, at least one (1) additional party has requested to be added to the Service List based on receipt of the First Letter to Creditors.
47. As described above, the CCAA Termination Order, including the CCAA Release, was adjourned *sine die*. The Applicants did not send additional correspondence broadly to creditors advising of the adjournment. Nevertheless, by October 5, 2020, no creditor had communicated to the Applicants or its counsel any opposition or intention to oppose to the CCAA Release.
48. Prior to the within application, on November 9, 2020, the Applicants initiated a second mailing (the "**Second Letter to Creditors**"), referring to and enclosing the First Letter to Creditors, and advising that the application for the CCAA Release had been rescheduled to November 24, 2020. A copy of the Second Letter to Creditors is attached hereto and marked as **Exhibit "D"**.
49. I am advised by both Mark Siry and Asim Iqbal of Miller Thomson LLP, who were the contacts for the Applicants to whom recipients of the First and Second Letter to Creditors were directed to contact, that no party has opposed or expressed an intention to oppose the CCAA Release.
50. The Applicants' stakeholders have had nearly two (2) months to consider the terms of the CCAA Release the Applicants seek at this application.
51. As at the date of this Affidavit, I am not aware of any proceeding that has been commenced or threatened in Canada or the United States in respect of a claim against the Applicants' current or former officers or director.

52. If the Court grants the CCAA Release, the Applicants intend to apply in the US Proceedings for recognition of the CCAA Release.
53. I understand that the Monitor and the Agent support the CCAA Release.

#### **STAY EXTENSION**

54. The Stay Period expires on November 30, 2020. Given the Applicants' request for the CCAA Termination Order, the Applicants request an extension of the Stay Period until the earlier of: (i) the filing of the Monitor's Termination Certificate, and (ii) February 26, 2021
55. The Applicants require an extension of the Stay Period in order to, among other things, complete the Remaining Activities in an orderly fashion.
56. I believe the Applicants have been acting in good faith and with due diligence since the commencement of these CCAA proceedings.
57. I understand the Monitor will be filing a report supporting, among other things, the Applicants request for a stay extension.
58. The Applicants should have sufficient liquidity during the requested extension of the Stay Period. A revised cash flow forecast (the "**Cash Flow Forecast**") for the Stay Period will be appended to the Monitor's report filed in connection with this application.
59. I believe no creditor will be materially prejudiced by the requested extension of the Stay Period. I understand that the Monitor and the Agent support the requested extension.

#### **APPROVAL OF FEES AND SEALING ORDER**

60. The CCAA Termination Order contemplates the approval of the fees and disbursements of the Monitor and its legal counsel, which are more particularly set out in the Seventh Report.
61. In my view, the Monitor's and its legal counsel's fees are reasonable.
62. In connection with the approval of the Monitor's and its legal counsel's fees and disbursements, the Applicants request a sealing order to seal the detailed docket entries of the Monitor and its counsel. The detailed docket entries contain sensitive and



THIS IS EXHIBIT "A" REFERRED TO IN THE  
AFFIDAVIT OF JOHN STEVENS  
SWORN BEFORE ME THIS 16<sup>th</sup> DAY OF NOVEMBER, 2020



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A COMMISSIONER FOR OATHS IN AND FOR THE  
PROVINCE OF ALBERTA

MARK SIRY  
BARRISTER & SOLICITOR

903714



Clerk's stamp:

COURT FILE NUMBER

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Oct 5, 2020

COURT

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File No.: 144572.3

## AFFIDAVIT OF JOHN STEVENS

Sworn on September 28, 2020

I John Stevens, of the City of St. Albert in the Province of Alberta, **MAKE OATH AND SAY THAT:**

1. I am the Chief Executive Officer of ENTREC Corporation ("**ENT Parent**"), Capstan Hauling Ltd., ENT Capital Corp., ENTREC Cranes & Heavy Haul Inc., ENTREC Holdings Inc., ENT Oilfield Group Ltd. ("**ENT Oilfield**"), and ENTREC Services Ltd. (collectively, the "**Applicants**") and I have personal knowledge of the Applicants and the matters to which I depose in this affidavit. Where I do not possess personal knowledge, I have stated the source of my information and, in all such cases, believe such information to be true.
2. I was the Chief Executive Officer of ENTREC Alberta Ltd. ("**ENT Alberta**"). As described below, the shares of ENT Alberta were sold as part of the Fort McMurray Transaction (as defined below). As a result, I am no longer the CEO as at the closing of the Fort McMurray Transaction. As part of this application, the Applicants seek to remove ENT Alberta as an Applicant to these CCAA proceedings.
3. Unless otherwise stated, monetary figures in this affidavit are expressed in Canadian dollars.
4. This affidavit is sworn in support of the Applicants' application for an order (the "**CCAA Termination Order**"):
  - (a) removing ENT Alberta as an Applicant from these CCAA proceedings;
  - (b) approving the professional fees and disbursements of the Monitor and the Monitor's legal counsel and approving the activities of the Monitor as set out in the Monitor's Fifth Report, to be filed (the "**Fifth Report**");
  - (c) terminating these CCAA proceedings on the filing of a certificate by the Monitor with the Court and discharging the Monitor;
  - (d) granting enhanced powers to the Monitor for the remainder of these CCAA proceedings;

- (e) releasing all claims of third parties against:
    - (i) the Monitor and its legal counsel; and
    - (ii) the Applicants' directors and officers except for certain insured claims and claims that cannot be released under Section 5.1(2) of the CCAA, as described below;
  - (f) approving certain distributions to the Agent; and
  - (g) extending the stay of proceedings until the earlier of: (i) the filing by the Monitor of the Termination Certificate (as defined below), and (ii) December 31, 2020.
5. If granted, the relief sought will allow the Applicants to:
- (a) with the enhanced powers of the Monitor, complete all necessary steps remaining in and required to terminate these CCAA proceedings without incurring the costs of an additional court appearance (or appearances) unless necessary; and
  - (b) fulfill a critical term of the KERP/KEIP with respect to applying for the CCAA Release (as defined below) in favour of the Applicants' current and former officers and directors, which will facilitate the distribution to the Agent of approximately \$1,500,000 that would otherwise be held back as a reserve on account of the Directors' Charge.
6. As described below, the Applicants have employed enhanced notice procedures in respect of this application to ensure that all of the Applicants' stakeholders had ample notice and an opportunity to request to be included on the Service List. As described below, these enhanced notice procedures have led to a number of calls fielded by the Applicants' counsel and the Monitor, but, as at the date of this Affidavit, no party on such calls expressed an intention to oppose the relief sought.
7. I understand that the Monitor and the Agent support this application.

## **BACKGROUND**

8. ENT Parent is a heavy haul transportation and crane solutions provider to the oil and natural gas, construction, petrochemical, mining and power generation industries in Alberta and parts of the United States.

9. On May 15, 2020, the Alberta Court of Queen's Bench (the "**Court**") granted the Applicants protection under the *Companies' Creditors Arrangement Act* (the "**CCAA**") pursuant to the Initial Order of the Honourable Madam Justice B.E. Romaine (the "**Initial Order**"). On the same day, the US Bankruptcy Court for the Southern District of Texas granted an order for provisional relief commencing recognition proceedings under Chapter 15 of the US Bankruptcy Code.
10. On May 25, 2020, the Court granted:
  - (a) an amended and restated Initial Order (the "**ARIO**"); and
  - (b) an order (the "**SISP Order**") approving a sale and investment solicitation process (the "**SISP**") and appointing Ernst & Young Orenda Corporate Finance Inc. and Sequeira Partners to administer the SISP, and approving a key employee retention and incentive plan (the "**KERP/KEIP**").
11. Pursuant to the Initial Order and the ARIO, the following was also granted by Madam Justice B.E. Romaine, among other things:
  - (a) a stay of proceedings until August 7, 2020 (the "**Stay Period**");
  - (b) the appointment of Alvarez & Marsal Canada Inc. ("**A&M**") as monitor of the Applicants (the "**Monitor**");
  - (c) approval of an interim financing facility (the "**Interim Financing Facility**") provided by Wells Fargo Capital Finance Corporation (the "**Agent**") as administrative agent for a syndicate of lenders (the "**Syndicate**");
  - (d) established the priority of the Court-ordered charges against the Applicants' property (the "**Charges**"):
    - (i) first, a charge to secure the professional fees of the Applicants' counsel, the Monitor and its legal counsel to a maximum amount of \$750,000;
    - (ii) second, a charge to secure the indemnity in favour of the Applicants' directors and officers (the "**Directors' Charge**") of the applicable Applicant of post-filing claims to a maximum amount of \$1,500,000;
    - (iii) third, a charge to secure the KERP/KEIP to a maximum of \$1,500,000;

- (iv) fourth, the Sales Agent Charge to a maximum of \$1,000,000; and
  - (v) fifth, a charge to secure draws made by the Applicants under the Interim Financing Facility provided by the Syndicate.
12. On August 6, 2020, with the approval of the Applicants' board of directors (the "**Board**"), the Applicants applied for and obtained an order, among other things, extending the Stay Period until September 11, 2020.
13. On August 14, 2020, with the approval of the Board, the Applicants applied for and obtained an order (the "**Bonnyville AVO**") approving a transaction for the sale of all of the Applicants' assets in connection with its location in Bonnyville, Alberta (the "**Bonnyville Transaction**").
14. On August 31, 2020, with the approval of the Board, the Applicants applied for and obtained a number of orders, among other things (the "**Transaction Approval Orders**"):
- (a) approving a transaction (the "**US Transaction**") for the going concern sale of substantially all of the Applicants' US business;
  - (b) approving a transaction (the "**Fort McMurray Transaction**") for the going concern sale of the Applicants' branch located in Grande Prairie, Alberta;
  - (c) approving a transaction in respect of the return of a certain crane located in the United States to the primary lienholder (the "**Crane Transaction**");
  - (d) approving a transaction (the "**Liquidation**" and, together with the US Transaction, Crane Transaction and Fort McMurray Transaction, the "**August 31 Transactions**") for the liquidation of the Applicants' remaining Alberta equipment in respect of which a viable going concern transaction was not identified through the SISP; and
  - (e) authorizing the Monitor to distribute the net sale proceeds to the Agent in partial satisfaction of the Applicants' obligations owing to the Syndicate.
15. In support of the Transaction Approval Orders, the Applicants filed the Affidavit of John Stevens sworn August 24, 2020 (the "**Fifth Stevens Affidavit**"). A copy of the Fifth Stevens Affidavit (without exhibits) is attached hereto and marked as **Exhibit "A"**.

16. On September 9, 2020, the US Bankruptcy Court issued an Order which, *inter alia*, approved certain of the Transaction Approval Orders.

#### **EXTENSION OF THE SUPPORT AGREEMENT**

17. As described in the Fifth Stevens Affidavit, the Applicants and the Syndicate agreed to extend the Restructuring Support Agreement until September 11, 2020.
18. The Applicants and the Syndicate are currently finalizing a second amending agreement of the Restructuring Support Agreement under which the Syndicate will agree to continue to support these CCAA proceedings (the "**Second Amending Agreement**"). Once executed, the Applicants will include a copy of the executed Second Amending Agreement in a supplemental affidavit.
19. The purpose of the Second Amending Agreement is to facilitate the wind-down and termination of these CCAA proceedings, which includes the termination of the Charges.
20. Independent counsel for the Applicants' officers and directors played an active role with negotiating the Second Amending Agreement.
21. Under the terms of the Second Amending Agreement, among other things, the Applicants have agreed that the CCAA Termination Order sought shall include the establishment of a reserve in an amount satisfactory to the Agent and sufficient to wind up these CCAA proceedings and the US Proceedings (the "**Reserve**"). I understand that the amount of the Reserve is being determined by the Applicants, in consultation with the Monitor, and will require the consent of the Agent. The Reserve will be further addressed in the Fifth Report or in a Supplemental Affidavit to be filed in connection with this Application.

#### **STATUS OF THE TRANSACTIONS**

22. The Applicants continue to work with the respective purchasers of the Applicants' assets to close the August 31 Transactions.
23. On September 1, 2020, the Bonnyville Transaction closed. On September 2, 2020, the Agent confirmed to the Monitor that it received the sale proceeds of the Bonnyville Transaction (approximately \$8,000,000). This Court authorized the distribution of the Bonnyville Transaction sale proceeds to the Agent on August 14, 2020.

24. On September 15, 2020, the Fort McMurray Transaction closed. On September 16, 2020, the Agent confirmed to the Monitor that the Agent was in receipt of the sale proceeds of the Fort McMurray Transaction (approximately \$5.85 million). This Court authorized the distribution of the Fort McMurray Transaction sale proceeds to the Agent on August 31, 2020.
25. As described in the Stevens Affidavit, the Applicants anticipate receiving the proceeds from the Liquidation on or about October 6, 2020, the date of the liquidator's auction. This Court approved the distribution of the proceeds from the Liquidation on August 31, 2020.
26. With respect to the US Transaction, on September 8, 2020, the Applicants received a request from the purchaser of the US Transaction (the "**US Purchaser**") to extend the closing date, which was initially scheduled for September 16, 2020. The US Purchaser advised that they required additional time to finalize the documentation for their financing and further advance the business integration process. The Applicants, in consultation with the Board, and with the consent of the Agent and Monitor, agreed to an extension of the closing date to September 30, 2020.
27. The US Transaction is expected to close on September 30, 2020. This Court approved the distribution of the sale proceeds from the US Transaction to the Agent on August 31, 2020.

#### **REMOVAL OF ENT ALBERTA AS APPLICANT**

28. As described above, the Fort McMurray Transaction closed on September 15, 2020. The purchased assets in the Fort McMurray Transaction included the shares of ENT Alberta.
29. ENT Alberta is an Alberta corporation and was a wholly owned subsidiary of ENT Parent until the closing of the Fort McMurray Transaction.
30. Within the Applicants' operations, the purpose of ENT Alberta was to hold legal title and certain registrations of equipment used in the Applicants' operations.
31. In order to facilitate an orderly transition to the purchaser of the Fort McMurray Transaction (the "**FMM Purchaser**"), from an operational perspective, the purchaser determined that the shares of ENT Alberta were required to be purchased assets to

achieve more efficient integration of the acquired assets with respect to branding, safety, certifications and registrations.

32. As part of the closing of the Fort McMurray Transaction, the Syndicate agreed to release its security interest against ENT Alberta after obtaining an undertaking pursuant to which the FMM Purchaser and ENT Alberta declared, certified and agreed that:
- (a) the FMM Purchaser and ENT Alberta has, and at the closing date of the FMM Transaction shall have, no ownership, right, beneficial title or interest in or to those certain assets that did not form the purchased assets in the FMM Transaction and in respect of which ENT Alberta was the registered owner but ENT Oilfield was the beneficial owner (the "**Vendor Assets**");
  - (b) neither the FMM Purchaser nor ENT Alberta shall gain any ownership, right, title or interest in or to the Vendor Assets by way of the completion of the FMM Transaction; and
  - (c) the FMM Purchaser shall, and shall cause ENT Alberta to, execute and deliver, or cause to be executed and delivered, all such documents and instruments and do, or cause to be done, all such acts and things as the Applicants and/or the Monitor may reasonably require to effectively convey the Vendor Assets to third party purchasers and register the Vendor Assets in the names of such third party purchasers.
33. Attached and marked hereto as **Exhibit "B"** is a copy of the Corporate Profile Report dated September 23, 2020 indicating that:
- (a) the current officers and directors of ENT Alberta are Scott LaPrairie, Roachelle LaPrairie and Raegan LaPrairie, who are not associated with the Applicants and are associated with the FMM Purchaser; and
  - (b) the current Voting Shareholders are none of the Applicants.
34. For the foregoing reasons, the Applicants seek an Order removing ENT Alberta as an Applicant in these CCAA proceedings.

**EXPANSION OF MONITOR'S POWERS AND CCAA TERMINATION ORDER**

35. With the sale of substantially all of the Applicants' assets upon closing of the August 31 Transactions, the Applicants have will no remaining operations and will have fulfilled the purpose of these CCAA proceedings. The final step is to wind down the Applicants' estates.
36. The activities remaining with respect to the Applicants' estates include the following (the "**Remaining Activities**"):
  - (a) collect outstanding accounts receivables and sell any remaining tangible assets;
  - (b) distribute the net proceeds from the August 31 Transactions following their respective closings;
  - (c) complete such administrative steps as are necessary or advisable to wind down each of the Applicants' estates, including, if determined appropriate, assigning the Applicants into bankruptcy; and
  - (d) the filing by the Monitor of a certificate (the "**Termination Certificate**") certifying that all of the Remaining Activities have been completed and these CCAA proceedings are terminated.
37. In the Applicants' view, based on the Cash Flow Forecast (as defined below), the quantum of the Reserve is sufficient to complete the Remaining Activities and wind up these CCAA proceedings and the US Proceedings.
38. It is anticipated that the Applicants' current management will resign following the closing of the August 31 Transactions. Under the Second Amending Agreement, the Applicants' current directors and officers will be required to resign on or before the granting of the CCAA Termination Order (if granted). Following the resignation of the Applicants' directors and officers, the Applicants will not have the management structure in place to ensure an orderly wind-up of the Applicants' CCAA proceedings. As such, the Applicants' seek an order to enhance the powers of the Monitor and terminate these CCAA proceedings.

*Enhanced Powers of the Monitor*

39. The enhanced powers of the Monitor will allow the Monitor, in the name of the Applicants, to, without further order of the Court but subject to the terms of the Restructuring Support Agreement:
- (a) complete, in the name of the Applicants, any and all steps and actions required to wind down the Applicants' estates;
  - (b) collect the remaining accounts receivables and, if necessary, commence legal proceedings to recover receivables;
  - (c) cause the Applicants to make permitted disbursements;
  - (d) market and sell any of the Applicants remaining assets;
  - (e) engage, negotiate or settle with any creditor or other stakeholder of the Applicants;
  - (f) engage, retain or terminate employees, consultants or contractors;
  - (g) have complete access to the Applicants' books and records;
  - (h) exercise any shareholder rights; and
  - (i) take any and all steps in the name of and on behalf of the Applicants to facilitate the administration of the Applicants' estates.
40. With enhanced powers, the Monitor will have the authority to direct the Applicants to complete the Remaining Activities, recover on remaining assets, allow the officers and directors to resign and reduce professional costs, while maintaining the CCAA proceedings which, in the Applicants' view, will improve net recoveries on the residual assets.
41. Under the Second Amending Agreement, the Applicants have covenanted in favour of the Agent to seek an order enhancing the powers of the Monitor in the form of the CCAA Termination Order. The Agent is the Applicants' senior secured creditor and stands to suffer a substantial shortfall after receiving the proceeds from the sale of substantially all of the Applicants' assets. The Agent supports the enhancement of the Monitor's powers.

*CCAA Termination and Discharge of the Monitor*

42. The proposed CCAA Termination Order contemplates the termination of these CCAA proceedings upon the filing by the Monitor of the Termination Certificate.
43. This will allow the Monitor to complete the Remaining Activities and terminate these CCAA proceedings without the expense of another court appearance for the purpose of obtaining a discharge. With this proposed structure, the Applicants are attempting to maximize the recoveries of stakeholders by reducing the overall professional costs.
44. On the filing of the Termination Certificate, the CCAA Termination Order will discharge the Monitor. Notwithstanding the Monitor's discharge, the Monitor will retain all of the protection in favour of the Monitor under the CCAA, the ARIO or any other Order granted in these CCAA proceedings, and the Monitor will continue to have the authority necessary to complete or address matters ancillary to these CCAA proceedings following the filing of the Monitor's Certificate.
45. The CCAA Termination Order provides for a release of claims in favour of the Monitor and its legal counsel, save and except for any liability arising out of any fraud, gross negligence or wilful misconduct on the part of the Monitor or its legal counsel. I understand that the release language is based on the Template Receiver's Discharge Model Order of the Alberta Court of Queen's Bench, with necessary modifications.
46. I believe the Monitor, A&M, and its legal counsel have been a critical component of and has contributed significant value to these CCAA proceedings. In the Applicants' view, the release in favour of the Monitor and its legal counsel is appropriate.

**DIRECTORS' RELEASE**

47. As set out paragraphs 33 to 36 of my Affidavit sworn July 27, 2020 in the within Action, it is a term of the KERP/KEIP that, at the appropriate time, the Applicants will seek a Court-ordered release in favour of the Applicants' officers and directors. This Court approved the KERP/KEIP pursuant to the SISP Order.
48. The CCAA Termination Order provides for a release in favour of the Applicants' current and former directors and officers (the "CCAA Release") from any and all D&O Claims (as defined in the CCAA Termination Order).

49. The CCAA Release does not include any D&O Claims to the extent that any D&O Claims are covered by an applicable insurance policy of the Applicants' (an "**Insured Claim**"). Any person with an Insured Claim will be limited to recovery in respect of the Insured Claim solely from the proceeds of the applicable insurance policies. Further, the CCAA Release does not release the Applicants' directors and officers from any claims under Section 5.1(2) of the CCAA.
50. The CCAA Release will facilitate the distribution of the Applicants' remaining estate, will decrease the quantum of the Reserve required to be retained and will facilitate the completion of these CCAA proceedings without spending estate resources in connection with the development and implementation of a plan of compromise or arrangement and the associated procedural steps, such as a claims procedure order.
51. The Applicants, in consultation with the Monitor and the Agent, who stands to suffer a substantial shortfall, have determined that there are insufficient resources to undertake the process required to develop and implement a plan of arrangement, and the time and expense associated with a plan of arrangement would not be in the best interests of the Applicants or their stakeholders.
52. The Applicants' directors and officers have been acting in good faith and with due diligence, have played an important role in these CCAA proceedings and have been instrumental in administering the SISP and identifying and facilitating the potential transactions that will lead to the sale of substantially all of the Applicants' assets and the preservation of approximately 131 jobs in Alberta. Upon the closing of the US Transactions, it is expected that an additional 70 jobs in the United States will be preserved.
53. In addition to the foregoing:
  - (a) the Applicants' directors and officers have provided critical direction leading up to the commencement of these CCAA proceedings;
  - (b) the Applicants' directors and officers remained with the company during the CCAA proceeding and continued to fulfill their duties;
  - (c) the CCAA Release will facilitate a monetary distribution to the Agent of up to \$1.5 million, which would otherwise be held back on account of the Directors' Charge; and

- (d) in my view, the CCAA Release will provide certainty and finality of these CCAA proceedings in the most efficient manner.

*Notice of CCAA Release*

54. The Applicants have taken extraordinary efforts to give interested parties and the Service List advance notice of the Applicants' intention to seek a release.
55. Reference to the Applicants' intention to seek the CCAA Release on this application was included in paragraphs 74-77 of the Fifth Stevens Affidavit.
56. In addition, on September 17, 2020, the Applicants initiated the mailing of a letter to all of its creditors on the Creditors' List and current and former employees in both Canada and the United States (the "**Letter to Creditors**"). A copy of the Letter to Creditors is attached hereto and marked as **Exhibit "C"**.
57. In summary, the Letter to Creditors:
- (a) advised that the Applicants intend to seek the CCAA Release at an application before this Court scheduled for October 5, 2020;
  - (b) provided the URLs for both the Monitor's website and the website maintained by Stretto (the Applicants' approved noticing agent in the United States) for the US Proceedings and encourages the reader to visit the case websites;
  - (c) advised that the Applicants intend to seek recognition of the CCAA Release in the US Proceeding (if granted);
  - (d) invited the reader to email Mark Siry of Miller Thomson, insolvency counsel for the Applicants, if the reader wishes to be added to the Service List;
  - (e) stated that the reader may wish to retain legal advice regarding their specific rights and concerns in connection with the Applicants' intended application for the CCAA Release; and
  - (f) invited the reader to contact the Monitor or the Applicants' counsel to discuss the Letter to Creditors.
58. I am advised by Asim Iqbal of Miller Thomson LLP, and verily believe, that, as at the date of this Affidavit, Miller Thomson has received approximately twelve (12) phone

calls from recipients of the Letter of the Creditors, and none of the recipients who called expressed an intention to oppose the CCAA Release. I am further advised by Mr. Iqbal that, as at the date of this Affidavit, at least one (1) additional party has requested to be added to the Service List based on receipt of the letter. As at the date of this Affidavit, I am not aware of, and have not directly received, any communication from a recipient of the Letter to Creditors or otherwise expressing an intention to oppose the Applicants' request for an order granting the CCAA Release.

59. As at the date of this Affidavit, I am not aware of any proceeding that has been commenced or threatened in Canada or the United States in respect of a claim against the Applicants' current or former officers or directors.
60. If the Court grants the CCAA Release, the Applicants intend to apply in the US Proceedings for recognition of the CCAA Release.
61. I understand that the Monitor and the Agent support the CCAA Release.

#### STAY EXTENSION

62. The Stay Period expires on October 9, 2020. Given the Applicants' request for the CCAA Termination Order, the Applicants request an extension of the Stay Period until the earlier of: (i) the filing by the Monitor of the Termination Certificate and (ii) December 31, 2020.
63. The Applicants require an extension of the Stay Period in order to, among other things, complete the Remaining Activities in an orderly fashion.
64. I believe the Applicants have been acting in good faith and with due diligence since the commencement of these CCAA Proceedings.
65. I understand the Monitor will be filing a report supporting, among other things, the Applicants request for a stay extension.
66. The Applicants should have sufficient liquidity during the requested extension of the Stay Period. The Applicants will file a revised cash flow forecast (the "**Cash Flow Forecast**") for the Stay Period in a Supplemental Affidavit and/or the Fifth Report.
67. I believe no creditor will be materially prejudiced by the requested extension of the Stay Period. I understand that the Monitor and the Agent support the requested extension.



THIS IS EXHIBIT "B" REFERRED TO IN THE  
AFFIDAVIT OF JOHN STEVENS  
SWORN BEFORE ME THIS 16<sup>th</sup> DAY OF NOVEMBER, 2020



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A COMMISSIONER FOR OATHS IN AND FOR THE  
PROVINCE OF ALBERTA

MARK SIRY  
BARRISTER & SOLICITOR

**SUPPORT AGREEMENT SECOND AMENDING AGREEMENT**

**THIS SUPPORT AGREEMENT SECOND AMENDING AGREEMENT**  
(the "**Second Amending Agreement**") is made this 8<sup>th</sup> day of October, 2020.

**A M O N G:**

**WELLS FARGO CAPITAL FINANCE CORPORATION  
CANADA, as Administrative Agent  
("Agent")**

-and-

**WELLS FARGO CAPITAL FINANCE CORPORATION  
CANADA  
THE BANK OF NOVA SCOTIA  
CANADIAN WESTERN BANK  
THE TORONTO-DOMINION BANK, as Lenders  
(collectively, "Lenders")**

-and-

**ENTREC CORPORATION, as Borrower  
("Borrower")**

-and-

**CAPSTAN HAULING LTD.  
ENT CAPITAL CORP.  
ENTREC CRANES & HEAVY HAUL INC.  
ENT OILFIELD GROUP LTD.  
ENTREC HOLDINGS INC.  
ENTREC SERVICES LTD., as Guarantors  
(collectively, "**Guarantors**"; and the Borrower and the Guarantors,  
collectively, the "**Loan Parties**")**

**RECITALS:**

**WHEREAS** the Agent, the Lenders and the Borrower are parties to an Amended and Restated Credit Agreement made as of October 10, 2017 (as amended, modified, supplemented, extended, renewed, restated, or replaced, the "**Credit Agreement**");

**AND WHEREAS** on May 14, 2020, the Loan Parties, the Agent and the Lenders entered into a support agreement (the "**Support Agreement**") in connection with the CCAA Proceedings (as defined below);

**AND WHEREAS** on May 15, 2020, the Loan Parties obtained an Initial Order (the "**Initial Order**") under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the

"CCAA") from the Alberta Court of Queen's Bench (the "**CCAA Court**" and the proceedings thereunder, the "**CCAA Proceedings**");

**AND WHEREAS** on May 15, 2020: (a) the Monitor, as foreign representative, filed petitions for each of the Loan Parties under Chapter 15 of the U.S. Bankruptcy Code (the "**Chapter 15 Proceedings**") in the United States Bankruptcy Court for the Southern District of Texas (the "**U.S. Court**"); and (b) the U.S. Court in the U.S. Proceedings entered an order granting provisional relief providing that the Initial Order is given full force and effect in all respects on an interim basis;

**AND WHEREAS** on May 25, 2020 the Loan Parties obtained from the CCAA Court an Amended and Restated Initial Order (the "**Amended and Restated Initial Order**");

**AND WHEREAS** on July 27, 2020, the Loan Parties, the Agent and the Lenders entered into the Support Agreement Amending Agreement (the "**Support Agreement Amending Agreement**");

**AND WHEREAS** on August 31, 2020, the Loan Parties obtained from the CCAA Court certain orders, which among other things, approved sale transactions in respect of substantially all of the Loan Parties' remaining businesses and assets, including the sale of the Loan Parties' US assets (the "**US Assets**" and the sale in respect the US Assets, the "**US Sale Transaction**");

**AND WHEREAS** the US Sale Transaction did not close and was ultimately terminated;

**AND WHEREAS** the Borrower has requested from the Agent and the Lenders certain amendments to the Support Agreement, as amended by the Support Agreement Amending Agreement, including an extension of the Termination Date, in order to facilitate the remarketing and sale of the US Assets and the wind-down of the Insolvency Proceedings and the Loan Parties' remaining business;

**AND WHEREAS** the Loan Parties obtained an extension of the Stay Period (as defined in the Amended and Restated Initial Order) to November 30, 2020.

**AND WHEREAS** the Agent, the Lenders and the Borrowers have agreed to further amend the Support Agreement pursuant to the terms of this Second Amending Agreement; and

**NOW THEREFORE** in consideration of the respective covenants of the parties hereto herein contained and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged) the parties hereto agree as follows:

## **ARTICLE 1 INTERPRETATION**

### **1.1 Definitions**

In this Second Amending Agreement, unless the context otherwise requires, all terms defined in the Credit Agreement and not otherwise defined herein shall have the respective meanings ascribed to them in the Support Agreement, the Support Agreement Amending Agreement or the Credit Agreement, as applicable.

## **1.2 Gender and Number**

Words importing the singular include the plural and vice versa and importing gender include all genders.

## **1.3 Severability**

Each of the provisions contained in this Second Amending Agreement is distinct and severable, and a declaration of invalidity, illegality or unenforceability of any such provision or part thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision of this Second Amending Agreement.

## **1.4 Headings**

The division of this Second Amending Agreement into sections and the insertion of headings, articles, sections and clauses, and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Second Amending Agreement.

## **1.5 Governing Law**

This Second Amending Agreement shall be governed by and construed in accordance with the laws of the Province of Alberta and federal the laws of Canada applicable therein.

## **1.6 Currency**

Unless otherwise stated, all dollar amounts referenced are in Canadian dollars.

## **1.7 Joint and Several**

The Obligations of the Loan Parties hereunder are joint and several.

## **1.8 Conflicts**

If there is any inconsistency or conflict between the terms of the Support Agreement as amended by this Second Amending Agreement and the terms of the Loan Documents, the provisions of the Support Agreement as amended by this Amending Agreement shall prevail to the extent of the inconsistency, but the foregoing shall not apply to limit or restrict, in any way, the rights and remedies of the Agent and Lenders under the Support Agreement as amended by this Second Amending Agreement, the Loan Documents, the BIA, the PPSA, the US Bankruptcy Code, the applicable UCC, other applicable law, or otherwise, other than as may be specifically contemplated herein.

## **ARTICLE 2 AMENDMENTS TO SUPPORT AGREEMENT**

Each of the Loan Parties hereby acknowledges, confirms, and agrees that the Support Agreement shall be amended as follows:

**2.1** Section 4.21 of the Support Agreement shall be deleted in its entirety and replaced with the following:

"Notwithstanding any other term or condition of the Credit Agreement, the Interim Financing Facility shall terminate, and the Post-Filing Obligations shall be immediately due and payable by the Borrower to the Agent, on behalf of the Lenders, on the earlier of: (a) the termination of Insolvency Proceedings; and (b) December 31, 2020 (the earlier date being the "**Termination Date**")."

- 2.2 The KEIP/KERP shall be amended and restated in the form attached as Schedule "B" hereto.

### ARTICLE 3 AMENDMENTS TO CREDIT AGREEMENT

The Credit Agreement is amended as follows:

- 3.1 The parties hereto agree that, effective as of the date of this Second Amending Agreement, the Credit Agreement is amended as set forth in this Article 3). This Second Amending Agreement is an amendment to the Credit Agreement. Unless the context of this Second Amending Agreement otherwise requires, the Credit Agreement and the Second Amending Agreement shall be read together and shall have effect as if the provisions of the Credit Agreement and this Second Amending Agreement were contained in one agreement. The term "Agreement" when used in the Credit Agreement means the Credit Agreement as amended by Support Agreement, the Support Agreement Amending Agreement and this Second Amending Agreement, together with all other amendments, modifications, supplements, extensions, renewals, restatements and replacements thereof from time to time.

### ARTICLE 4 ADDITIONAL COVENANTS

- 4.1 As soon as practicably possible on a timeline acceptable to the Agent, and in any event, prior to November 30, 2020, the Loan Parties shall obtain an order in the CCAA Proceedings (the "**CCAA Termination Order**"), which provides for, among other things:

- (a) the termination of the CCAA Proceedings upon the completion of all wind-up activities in the CCAA Proceedings and the filing of a Monitor's certificate confirming same (the "**CCAA Termination Date**");
- (b) a reserve sufficient to wind-up the Insolvency Proceedings, which, for greater certainty, shall be acceptable to the Agent, in consultation with the Lenders;
- (c) a broad release in a form satisfactory to the Agent, the Loan Parties and the Loan Parties' officers and directors of pre-filing and post-filing claims to the extent permissible under the CCAA in favour of the Loan Parties' directors and officers;
- (d) subject to obtaining: (i) a release of all claims to which the Directors' Charge applies (the "**D&O Charge Release**"), and only such claims, against the Loan Parties' directors and officers; and (ii) the CCAA Termination Recognition Order (as defined below) confirming and adopting at least the D&O Charge Release, termination of the Directors' Charge and the release of all funds (to the parties

entitled thereto) reserved in connection therewith under the Amended and Restated Initial Order;

- (e) the termination of the KERP/KEIP Charge and the Sales Agent Charge and the release of all funds (to the parties entitled thereto) reserved in connection therewith under the Amended and Restated Initial Order;
- (f) an extension of the Stay Period (as defined in the Amended and Restated Initial Order) until the earlier of: (i) the CCAA Termination Date; and (ii) January 31, 2021; and
- (g) expanded powers for the Monitor to wind-up the Insolvency Proceedings and collect the Loan Parties' outstanding receivables.

The CCAA Termination Order must be in form and substance satisfactory to the Agent, in consultation with the Lenders, in its sole discretion. The CCAA Termination Date must occur on or prior to January 31, 2021.

- 4.2 The current directors and officers of the Loan Parties shall resign on or prior to the date on which the CCAA Termination Order is granted, unless the Agent agrees otherwise.
- 4.3 As soon as practicably possible on a timeline acceptable to the Agent, and in any event, prior to December 30, 2020, the Loan Parties shall obtain recognition of the CCAA Termination Order (including, for greater certainty, at least the D&O Charge Release) in the Chapter 15 Proceedings (the "**CCAA Termination Recognition Order**").
- 4.4 The Loan Parties shall immediately market and sell the US Assets in a manner acceptable to the Agent. As soon as practicably possible on a timeline acceptable to the Agent, and in any event, prior to November 30, 2020, the Loan Parties shall obtain an order in the CCAA Proceedings approving the sale of the US Assets (the "**US Asset Sale Order**"). The US Asset Sale Order must be in form and substance satisfactory to the Agent, in consultation with the Lenders, in its sole discretion.
- 4.5 As soon as practicably possible on a timeline acceptable to the Agent, and in any event, prior to December 30, 2020, the Loan Parties shall obtain recognition of the US Asset Sale Order in the Chapter 15 Proceedings.
- 4.6 If the Loan Parties have not entered into a going concern purchase agreement for the US Assets on or before October 30, 2020, in form and substance satisfactory to the Agent, in consultation with the Lenders, in its sole discretion, the Loan Parties shall immediately seek to liquidate the US Assets, unless the Agent agrees otherwise.
- 4.7 The Loan Parties shall obtain an order in the Chapter 15 Proceedings and/or take all other steps required to terminate the Chapter 15 Proceedings on or immediately following the CCAA Termination Date.

## **ARTICLE 5 REVISED BUDGET**

**5.1** The Borrower has provided the Agent with a revised cash flow forecast (the "**Revised Budget**") which has been reviewed by the Monitor and which shall be filed with the CCAA Court. The Revised Budget for the period between September 19, 2020 and December 4, 2020 is attached hereto as Schedule "A". The Revised Budget reflects on a line item basis, among other things, anticipated cash flow, cash receipts and disbursements, sales, and receivables levels. The Revised Budget and the proposed use of funds provided for therein is satisfactory to the Agent, in consultation with the Lenders. The Revised Budget may only be amended and modified with the prior written consent of the Agent, in consultation with the Lenders, in its sole discretion. The Revised Budget shall be rolled forward on a weekly basis; provided, however, that any changes shall be acceptable to the Agent, in consultation with the Lenders, in its sole discretion. The Revised Budget is a "Budget" as defined in the Support Agreement and shall be subject to the terms of the Support Agreement applicable to a Budget.

## **ARTICLE 6 SUPPORT OF AGENT FOR CCAA TERMINATION ORDER**

**6.1** The Agent and the Lenders shall support the application for the CCAA Termination Order and the CCAA Termination Recognition Order.

## **ARTICLE 7 GENERAL PROVISIONS**

### **7.1 Effect of this Agreement**

Except as expressly modified pursuant hereto, no other changes or modifications to the terms of the Loan Documents are intended or implied. The Loan Documents as modified by this Amending Agreement shall continue in full force and effect.

### **7.2 Loan Document**

This Amending Agreement is a Loan Document.

### **7.3 Further Assurances**

The parties hereto shall execute and deliver such supplemental documents and take such supplemental action as may be necessary or desirable by the Agent to give effect to the provisions and purposes of this Second Amending Agreement at the sole expense of the Borrower.

### **7.4 Binding Effect**

This Second Amending Agreement shall be binding upon and enure to the benefit of each of the parties hereto and their respective successors, heirs, executors, administrators, permitted assigns and legal representatives.

### **7.5 Assignment**

A Lender may assign its rights and obligations hereunder, in whole or in part, or grant a participation in its respective rights and obligations hereunder in accordance with Section 13 of the Credit Agreement; provided that, in the case of an assignment to a Person that is not an Affiliate of an assigning Lender, the Monitor has given its prior written consent after being provided with reasonable evidence that such assignee has the financial capacity to fulfill the obligations of such Lender hereunder. The Loan Parties may not assign their rights and obligations under this Second Amending Agreement.

### **7.6 Amendments, Waivers, etc.**

No amendment or waiver of any provisions of this Second Amending Agreement or consent to any departure by the Loan Parties from any provision thereof is effective unless it is made or given in accordance with Section 14 of the Credit Agreement. Such amendment, waiver or consent shall be effective only in the specific instance and for the specific purpose for which it is given.

### **7.7 Survival of Representations and Warranties**

All representations and warranties made in this Second Amending Agreement or any other document furnished in connection herewith shall survive the execution and delivery of this Second Amending Agreement and such other document delivered in connection herewith, and no investigation by the Agent or Lenders or any closing shall affect the representations and warranties or the rights of the Agent or Lenders to rely upon such representations and warranties.

### **7.8 No Novation**

This Second Amending Agreement will not discharge or constitute novation of any debt, obligation, covenant or agreement contained in the Loan Documents but the same shall remain in full force and effect save to the extent amended by this Second Amending Agreement.

### **7.9 Execution in Counterparts**

This Second Amending Agreement may be executed in counterparts, each of which shall be deemed to be an original and which taken together will be deemed to constitute one and the same instrument. Counterparts may be executed either in original, faxed or portable document format ("**PDF**") form and the parties adopt any signatures received by a receiving fax machine or by emailed PDF as original signatures of the parties.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first above mentioned.

**WELLS FARGO CAPITAL FINANCE CORPORATION CANADA**, as Agent and Lender

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

**THE BANK OF NOVA SCOTIA**, as Lender

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

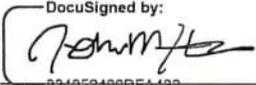
**CANADIAN WESTERN BANK**, as Lender

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

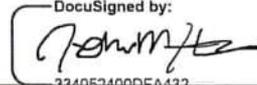
**THE TORONTO-DOMINION BANK**, as Lender

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

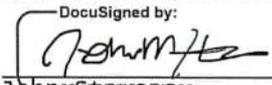
**ENTREC CORPORATION**

By:  \_\_\_\_\_  
Name: John Stevens  
Title: President & CEO

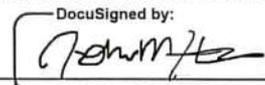
**ENT OILFIELD GROUP LTD.**

By:  \_\_\_\_\_  
Name: John Stevens  
Title: President & CEO

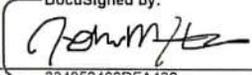
**CAPSTAN HAULING LTD.**

By:  \_\_\_\_\_  
Name: John Stevens  
Title: President & CEO

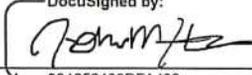
**ENTREC SERVICES LTD.**

By:  \_\_\_\_\_  
Name: John Stevens  
Title: President & CEO

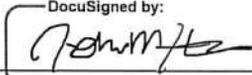
**ENTREC CRANES & HEAVY HAUL  
INC.**

DocuSigned by:  
  
By: \_\_\_\_\_  
Name: John Stevens  
Title: President & CEO

**ENT CAPITAL CORP.**

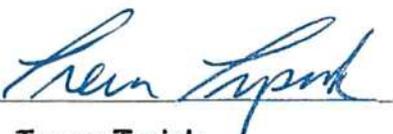
DocuSigned by:  
  
By: \_\_\_\_\_  
Name: John Stevens  
Title: President & CEO

**ENTREC HOLDINGS INC.**

DocuSigned by:  
  
By: \_\_\_\_\_  
Name: John Stevens  
Title: President & CEO

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first above mentioned.

**WELLS FARGO CAPITAL FINANCE CORPORATION CANADA**, as Agent and Lender

By: 

Name: **Trevor Tysick**  
Title: **Vice President**  
**Wells Fargo Capital Finance Corporation Canada**

**THE BANK OF NOVA SCOTIA**, as Lender

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

**CANADIAN WESTERN BANK**, as Lender

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

**THE TORONTO-DOMINION BANK**, as Lender

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

**ENTREC CORPORATION**

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

**ENT OILFIELD GROUP LTD.**

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

**CAPSTAN HAULING LTD.**

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

**ENTREC SERVICES LTD.**

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

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first above mentioned.

**WELLS FARGO CAPITAL FINANCE CORPORATION CANADA**, as Agent and Lender

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

**THE BANK OF NOVA SCOTIA**, as Lender

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

**CANADIAN WESTERN BANK**, as Lender

By:   
Name: *Arden Buskell*  
Title: *SANP, SAMCL*

**THE TORONTO-DOMINION BANK**, as Lender

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

**ENTREC CORPORATION**

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

**ENT OILFIELD GROUP LTD.**

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

**CAPSTAN HAULING LTD.**

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

**ENTREC SERVICES LTD.**

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

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first above mentioned.

**WELLS FARGO CAPITAL FINANCE CORPORATION CANADA**, as Agent and Lender

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

**THE BANK OF NOVA SCOTIA**, as Lender

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

**CANADIAN WESTERN BANK**, as Lender

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

**THE TORONTO-DOMINION BANK**, as Lender

By:   
Name: Andrea Jamnisek  
Title: Director, Financial Restructuring Group

**ENTREC CORPORATION**

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

**ENT OILFIELD GROUP LTD.**

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

**CAPSTAN HAULING LTD.**

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

**ENTREC SERVICES LTD.**

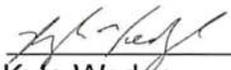
By: \_\_\_\_\_  
Name:  
Title:

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first above mentioned.

**WELLS FARGO CAPITAL FINANCE CORPORATION CANADA**, as Agent and Lender

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

**THE BANK OF NOVA SCOTIA**, as Lender

By:    
Name: Kyle Wedge      April Shaddock  
Title: Director      Group Lead

**CANADIAN WESTERN BANK**, as Lender

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

**THE TORONTO-DOMINION BANK**, as Lender

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

**ENTREC CORPORATION**

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

**ENT OILFIELD GROUP LTD.**

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

**CAPSTAN HAULING LTD.**

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

**ENTREC SERVICES LTD.**

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

**SCHEDULE "A"**

**ENTREC**

Fourth Cash Flow Forecast<sup>1</sup> - Prepared by Management  
 For the 11 weeks ending December 4, 2020  
 (in CAD\$000s)

Week		Week 1	Week 2	Week 3	Week 4	Week 5	Week 6	Week 7	Week 8	Week 9	Week 10	Week 11	Total
Week ending	Notes	25-Sep	2-Oct	9-Oct	16-Oct	23-Oct	30-Oct	6-Nov	13-Nov	20-Nov	27-Nov	4-Dec	
<b>Operating receipts</b>													
Collection of receivables and forecast sales													
ENTREC Canada	2	\$ 960	\$ 625	\$ 625	\$ 625	\$ 625	\$ 625	\$ 625	\$ 200	\$ 200	\$ 200	\$ 100	\$ 5,408
ENTREC US	2	292	500	500	500	402	402	402	402	402	402	150	4,604
Net proceeds from sale process and redundant assets	3	-	-	200	-	300	25	-	-	-	-	-	675
Canada Emergency Wage Subsidy		-	-	-	150	-	-	-	-	-	-	-	150
Other receipts		-	-	-	-	-	-	-	-	-	-	80	80
<b>Total operating receipts</b>		<b>1,252</b>	<b>1,125</b>	<b>1,325</b>	<b>1,275</b>	<b>1,327</b>	<b>1,052</b>	<b>1,027</b>	<b>601</b>	<b>601</b>	<b>601</b>	<b>732</b>	<b>10,917</b>
<b>Operating disbursements</b>													
Payroll and benefits - Canada	4	51	164	-	60	-	45	-	35	-	35	86	476
Payroll and benefits - US	4	-	603	-	402	-	402	134	402	-	402	134	2,478
Payroll remittances - Canada	4	48	100	-	15	-	15	-	15	-	15	15	223
Payroll remittances - US	4	-	174	33	174	33	174	33	174	33	174	67	1,072
Lease operators	5	103	-	-	-	25	-	-	-	-	-	-	128
Repairs, maintenance and other operating costs	5	169	196	158	145	145	145	121	121	121	121	100	1,539
Equipment lease payments		19	-	-	-	-	-	-	-	-	-	-	19
Fuel	5	63	47	47	47	47	47	47	47	47	47	27	512
General and administrative costs	6	2	26	13	23	13	23	13	13	13	33	-	176
Insurance and licensing	7	-	173	-	-	-	-	173	-	-	-	-	345
Shop rent and employee housing	8	-	112	-	-	-	-	112	-	-	-	8	233
Sales tax		-	100	-	-	-	75	-	-	-	-	-	175
Contingency	9	-	32	7	7	7	38	7	7	7	32	13	155
<b>Total operating disbursements</b>		<b>455</b>	<b>1,726</b>	<b>258</b>	<b>873</b>	<b>270</b>	<b>964</b>	<b>640</b>	<b>814</b>	<b>221</b>	<b>859</b>	<b>451</b>	<b>7,531</b>
<b>Net operating cash flow</b>		<b>797</b>	<b>(602)</b>	<b>1,067</b>	<b>402</b>	<b>1,057</b>	<b>87</b>	<b>387</b>	<b>(212)</b>	<b>380</b>	<b>(257)</b>	<b>281</b>	<b>3,387</b>
<b>Other disbursements</b>													
KERP/KEIP payments	10	-	445	185	-	-	-	-	-	-	-	-	630
Professional fees	11	319	691	25	92	135	15	349	-	189	-	327	2,141
Sales Agent fees	11	-	421	-	-	-	-	23	-	-	-	-	443
ABL interest costs	12	-	251	-	-	-	-	188	-	-	-	169	608
Interim Facility interest costs	13	-	181	-	-	-	-	239	-	-	-	263	684
Interim Facility fees	13	-	12	-	-	-	-	12	-	-	-	12	36
<b>Total other disbursements</b>		<b>319</b>	<b>2,001</b>	<b>210</b>	<b>92</b>	<b>135</b>	<b>15</b>	<b>810</b>	<b>-</b>	<b>189</b>	<b>-</b>	<b>771</b>	<b>4,541</b>
<b>Net cash flow</b>		<b>\$ 478</b>	<b>\$ (2,603)</b>	<b>\$ 857</b>	<b>\$ 310</b>	<b>\$ 922</b>	<b>\$ 72</b>	<b>\$ (423)</b>	<b>\$ (212)</b>	<b>\$ 192</b>	<b>\$ (257)</b>	<b>\$ (490)</b>	<b>\$ (1,155)</b>
<b>Continuity of Financing</b>													
<b>Pre-filing debt</b>													
ABL balance		\$ 43,222	\$ 41,970	\$ 40,845	\$ 39,520	\$ 38,396	\$ 37,069	\$ 36,017	\$ 34,990	\$ 34,389	\$ 33,787	\$ 33,186	\$ 43,222
Less: cash receipts		(1,252)	(1,125)	(1,325)	(1,125)	(1,327)	(1,052)	(1,027)	(601)	(601)	(601)	(732)	(10,767)
		<b>41,970</b>	<b>40,845</b>	<b>39,520</b>	<b>38,396</b>	<b>37,069</b>	<b>36,017</b>	<b>34,990</b>	<b>34,389</b>	<b>33,787</b>	<b>33,186</b>	<b>32,454</b>	<b>32,454</b>
Operating line		5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000
<b>Ending balance</b>		<b>46,970</b>	<b>45,845</b>	<b>44,520</b>	<b>43,396</b>	<b>42,069</b>	<b>41,017</b>	<b>39,990</b>	<b>39,389</b>	<b>38,787</b>	<b>38,186</b>	<b>37,454</b>	<b>37,454</b>
<b>Interim Facility</b>													
Opening balance		25,600	26,374	30,102	30,570	31,384	31,789	32,769	34,219	35,033	35,442	36,301	\$ 25,600
Draws (repayments)		774	3,727	468	814	405	979	1,450	814	410	859	1,221	11,922
<b>Ending Interim Facility balance (cash)</b>		<b>26,374</b>	<b>30,102</b>	<b>30,570</b>	<b>31,384</b>	<b>31,789</b>	<b>32,769</b>	<b>34,219</b>	<b>35,033</b>	<b>35,442</b>	<b>36,301</b>	<b>37,522</b>	<b>37,522</b>
<b>Total financing, ending position</b>		<b>\$ 73,344</b>	<b>\$ 75,947</b>	<b>\$ 75,090</b>	<b>\$ 74,780</b>	<b>\$ 73,858</b>	<b>\$ 73,785</b>	<b>\$ 74,209</b>	<b>\$ 74,421</b>	<b>\$ 74,229</b>	<b>\$ 74,487</b>	<b>\$ 74,977</b>	<b>\$ 74,977</b>

**ENTREC Corporation**  
**Fourth Cash Flow Forecast - Prepared by Management**  
**Notes and Assumptions**

1. The weekly cash flow projection has been prepared by Management of ENTREC Corporation and its subsidiaries ("ENTREC") to set out the cash flow of ENTREC during the Companies' Creditors Arrangement Act proceedings (the "CCAA Proceedings") from September 19, 2020 until December 4, 2020 (the "Forecast Period").

The cash flow projections (the "Fourth Cash Flow Forecast") have been prepared by Management based on unaudited financial information, and Management's estimates of its projected receipts and disbursements. Readers are cautioned that since the estimates are based on future events and conditions that are not ascertainable, the actual results achieved will vary, even if the assumptions materialize, and such variations may be material.

There are no representations, warranties or other assurances that any of the estimates, forecasts, or projections will be realized. The projections are based upon certain estimates and assumptions discussed below with respect to operations, including the assumption that ENTREC continues to operate within the protections afforded as a result of the Amended and Restated Initial Order granted on May 25, 2020 and as may be amended from time to time during the CCAA Proceedings. Upon such amendments including the results from the ongoing SISF process, Management will update its cash flow forecast accordingly.

The Fourth Cash Flow Forecast excludes the expected net proceeds from the sale of the Whitecourt and Grande Prairie assets at the Ritchie Bros. auction scheduled for October 6-7, 2020.

The Revised Fourth Cash Flow Forecast is presented in thousands of Canadian dollars and amounts denominated in US currency have been converted into Canadian dollars at an exchange rate of C\$1:US\$.7465 throughout the period.

2. Receipts from receivables and sales forecast to account for the wind-up of the Canadian operations and the continuing U.S. operations.
3. Net proceeds from sale transactions and redundant assets includes:
  - sale of miscellaneous equipment located in Grand Prairie, as well as Capstan's trade name and website, for \$200,000 plus tax;
  - estimated equity from the sale of certain leased pick-up trucks; and
  - sale of certain miscellaneous equipment by Century Services.
4. Payroll includes key staff members of the corporate head office as well as the employees in the U.S. operations.
5. Operating costs include repairs, maintenance parts purchases and permits of approximately \$1.5 million, fuel of \$500,000, and the final payments to the lease operators in Canada of approximately \$130,000 during the Forecast Period. Disbursements are based on expected run rates and assumed to be paid largely on normal credit terms.
6. General and administrative expenses include utilities and other administrative costs during the Forecast Period and are based on expected run rate in 2020.
7. The insurance policy for commercial general liability and property and casualty were renewed for the period June 1, 2020 to May 31, 2021. The U.S. policy includes monthly payments of approximately USD \$114,000 under a financing arrangement and the Canadian policy was renewed for an annual premium of \$1.6 million, which was paid in June 2020.
8. Rent is forecast based on actual rent payments assuming operations continue uninterrupted at all locations in the U.S. in the short term. Monthly rent include facilities in Alberta, North Dakota, Texas and Colorado, as well as property taxes.
9. A total contingency of \$150,000 is included for the Forecast Period for any unanticipated expenses.
10. The Key Employee Retention and Incentive Plans ("KERP/KEIP") are payments for key employees critical to the restructuring efforts of the company pursuant to the Support Agreement as amended. Payments for the KERP/KEIP amounts occurred on October 1, 2020 and select payments are expected to be paid during the week ending October 9, 2020.
11. Professional fees have been forecast based on estimates of professional service firm costs relating to the CCAA Proceedings and include ENTREC's legal counsel in Canada and the US, the Directors' legal counsel, the Monitor and its legal counsel, the Syndicate's financial advisor and its legal counsel in Canada and the U.S., and the Sales Agents.
12. ABL interest is payable on the first of the month in arrears and is estimated based on the average ABL balance outstanding during the month.
13. Interim Facility interest costs and fees are subject to the Support Agreement, as amended.

**SCHEDULE "B"**

**CONFIDENTIAL**

## AMENDED AND RESTATED KERP/KEIP SCHEDULE FOR RSA

### ARTICLE 1 OVERVIEW

Capitalized terms used but not otherwise defined herein are as defined in that certain restructuring support agreement between the Loan Parties, the Agent and the Lenders (as amended from time to time, the “**RSA**”). All references to monetary amounts herein are expressed in Canadian dollars.

In connection with a potential application to the Alberta Court of Queen’s Bench (the “**CCAA Court**”) for an initial order under the *Companies’ Creditors Arrangement Act* (the “**CCAA**”, and the proceedings commenced thereby, the “**CCAA Proceeding**”), ENTREC Corporation, ENT Oilfield Group Ltd., Capstan Hauling Ltd., ENT Capital Corp., ENTREC Holdings Inc., ENTREC Cranes & Heavy Haul Inc., ENTREC Alberta Ltd., and ENTREC Services Ltd. (collectively, the “**Applicants**”), have determined that certain employees are critical to the Applicants’ operations and success.

In consultation with the proposed Monitor, the Applicants have developed a key employee retention and incentive plan for its Key Employees (as defined below) as set out herein. The Applicants intend to bring a motion (the “**KERP Motion**”) in the CCAA Proceedings seeking an order (the “**KERP/KEIP Order**”) approving the KERP/KEIP (as defined below) and granting the KERP/KEIP Charge.

It is a term of the RSA that the KERP/KEIP be in form and substance satisfactory to the Agent.

This document (the “**KERP/KEIP**”) sets out the terms and conditions upon which the Agent will support the Applicants’ KERP Motion and is intended to be included as a schedule to the RSA.

### ARTICLE 2 DEFINITIONS

The terms below are defined as follows:

- (a) “**CCAA Termination Date**” means the date upon which the CCAA Court grants an order terminating the CCAA Proceeding.
- (b) “**Equipment**” means the property and equipment, equipment held under lease, and finance lease receivables of the Applicants giving rise to Net Proceeds.
- (c) “**KERP/KEIP Charge**” means a court-ordered charge against all of the Applicants’ property to secure all amounts owing under the KERP/KEIP, which charge shall rank in priority to all other charges and encumbrances other than the Administration Charge and the Directors’ Charge.
- (d) “**KERP/KEIP Letter**” means the letter agreement to be entered into between the Applicants and each Key Employee, which shall be in form and substance satisfactory to the Agent, setting out the terms and conditions under which such Key Employee shall receive his or her entitlement to the KERP/KEIP. For greater

**CONFIDENTIAL**

certainty, to the extent of any conflict between the terms of the KERP Letter and this Agreement, this Agreement shall prevail.

- (e) “**KERP Milestone Date**” means the earlier of the Transaction Closing Date, the CCAA Termination Date and the Outside Date.
- (f) “**Key Employee**” means an employee of the Applicants who has been designated by the Applicants as a key employee under this KERP/KEIP and is eligible for the applicable KERP Amount and KEIP Amount on and subject to the terms and conditions set out in this KERP/KEIP and the applicable KERP/KEIP Letter.
- (g) “**Net Proceeds**” means the aggregate proceeds from a Transaction, less (i) applicable sales taxes, and (ii) the incremental cash advances drawn under the Interim Financing Facility up until the applicable KERP Milestone Date (net of repayments of the ABL Facility during the same period and net of any prepaid insurance premium refund receivable).
- (h) “**Outside Date**” means with respect to John Stevens, August 30, 2020, and with respect to all other Key Employees, September 30, 2020.
- (i) “**Pre-filing A/R**” means accounts receivables of the Applicants owing as at the date of the Initial Order.
- (j) “**Transaction Closing Date**” means the date upon which a Transaction closes resulting in the sale of all or substantially all of the Applicants’ assets.
- (k) “**US Sale Transaction**” means a transaction for the sale of all or substantially all of the Applicants’ US business and assets.

**ARTICLE 3  
KEY EMPLOYEES**

Subject to the terms and conditions of this KERP/KEIP and the applicable KERP/KEIP Letter, the following employees have been determined to be critical to the operations and success of the Applicants and are the beneficiaries under this KERP/KEIP (collectively, the “**Key Employees**”):

- (a) John Stevens, Chief Executive Officer, President and Director
- (b) Jason Vandenberg, Chief Financial Officer and Director
- (c) Jesse Taylor, Vice President – Operations of ENTREC Cranes & Heavy Haul Inc.
- (d) Glen Fleming, Executive Vice President - Operations
- (e) Gavin McLeod, VP Operations and Finance

**ARTICLE 4**  
**KEY EMPLOYEE RETENTION PLAN**

**4.1 KERP Amount**

Provided the KERP Payment Conditions are satisfied, each Key Employee shall receive a bonus payment from the Applicants in the amount set out in the table below (the “**KERP Amount**”):

<b>Key Employee</b>	<b>KERP Amount</b>
John Stevens	\$225,000
Jason Vandenberg	\$150,000
Jesse Taylor	\$125,000
Glen Fleming	\$100,000
Gavin McLeod	\$70,000

**4.2 KERP Payment Conditions**

No Key Employee shall be entitled to be paid the applicable KERP Amount unless the following conditions are satisfied (the “**KERP Payment Conditions**”):

- (a) the issuance of the Initial Order, KERP/KEIP Order, the Provisional Recognition Order, the Comeback Order and the Final Recognition Order;
- (b) the occurrence of a KERP Milestone Date; and
- (c) the Key Employee remains employed by the Applicants and has not resigned or been terminated for cause prior to the applicable KERP Milestone Date.

**ARTICLE 5  
KEY EMPLOYEE INCENTIVE PLAN**

**5.1 KEIP Amount**

On satisfaction of the KEIP Payment Conditions, on the applicable KEIP Milestone Date, each Key Employee shall be entitled to be paid by the Applicants an amount not to exceed the following (the “KEIP Amount”):

<b>Key Employee</b>	<b>KEIP Amount</b>
John Stevens	<p><b><i>Equipment:</i></b></p> <p>(a) 1.5% of Net Proceeds allocated to Equipment greater than \$60,000,000 but equal to less than \$65,000,000; <u>plus</u></p> <p>(b) 1.8% of Net Proceeds allocated to Equipment greater than \$65,000,000 but equal to or less than \$70,000,000 <u>plus</u></p> <p>(c) 2.7% of Net Proceeds allocated to Equipment greater than \$70,000,000; <u>plus</u></p> <p><b><i>Pre-filing A/R:</i></b> 1% of Pre-filing A/R collected greater than \$15,000,000.</p>
Jason Vandenberg	<p><b><i>Equipment:</i></b></p> <p>(a) 1.0% of Net Proceeds allocated to Equipment greater than \$60,000,000 but equal to or less than \$65,000,000; <u>plus</u></p> <p>(b) 1.2% of Net Proceeds allocated to Equipment greater than \$65,000,000 but equal to or less than \$70,000,000; <u>plus</u></p> <p>(c) 1.8% of Net Proceeds allocated to Equipment greater than \$70,000,000; <u>plus</u></p> <p><b><i>Pre-filing A/R:</i></b> 1% of Pre-filing A/R collected greater than \$15,000,000</p>
Jesse Taylor	<p><b><i>Pre-filing A/R:</i></b> 1% of Pre-filing A/R collected by the Applicants greater than \$15,000,000</p>
Glen Fleming	<p><b><i>Pre-filing A/R:</i></b> 1% of Pre-filing A/R collected by the Applicants greater than \$15,000,000</p>
Gavin McLeod	<p><b><i>Pre-filing A/R:</i></b> 1% of Pre-filing A/R collected by the Applicants greater than \$15,000,000</p>

## 5.2 KEIP Payment Conditions

Notwithstanding anything else contained herein, no Key Employee shall be entitled to be paid the applicable KEIP Amount unless the following conditions are satisfied (the “**KEIP Payment Conditions**”):

- (a) the issuance of the Initial Order, KERP/KEIP Order, the Provisional Recognition Order, the Comeback Order and the Final Recognition Order;
- (b) solely with respect to the KEIP Amount in respect of Equipment, the US Sale Transaction has closed and receipt in full by the Agent of the proceeds of such transaction minus any applicable reserves, which must be acceptable to the Agent;
- (c) the occurrence of a KEIP Milestone Date; and
- (d) the Key Employee remains employed by the Applicants and has not resigned or been terminated for cause prior to the Outside Date.

## 5.3 KEIP Milestone Dates

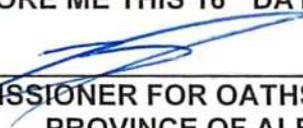
Provided the KEIP Payment Conditions are satisfied, each Key Employee shall be entitled to be paid by the Applicants the applicable KEIP Amount on the following dates (each a “**KEIP Milestone Date**”):

- (a) for John Stevens, with respect to Equipment, the date on which the all of the following have occurred:
  - (i) receipt in full by the Agent of the Guarantee amount (as defined in, and subject to the terms of, the Contract to Auction between the Applicants and Ritchie Bros. Auctioneers (Canada) Ltd. dated August 24, 2020), minus any applicable reserves, which must be acceptable to the Agent; and
  - (ii) the US Sale Transaction has closed and receipt in full by the Agent of the proceeds of such transaction minus any applicable reserves, which must be acceptable to the Agent;
- (b) for Jason Vandenberg, with respect to Equipment, the earlier of the Transaction Closing Date and the Outside Date; and
- (c) with respect to Pre-filing A/R, September 30, 2020.

**ARTICLE 6  
ADDITIONAL TERMS**

- 6.1** Each Key Employee shall receive a KERP/KEIP Letter setting out the terms and conditions of such Key Employee's KERP/KEIP entitlements. The KERP/KEIP Letter shall be on the terms set out herein and in any event be in form and substance satisfactory to the Agent. At a minimum, each KERP/KEIP Letter shall include the following terms:
- (a) in the event of any conflict between this KERP/KEIP and the KERP/KEIP Letter, this KERP/KEIP shall prevail;
  - (b) the KERP and KEIP Amount shall be secured by the KERP/KEIP Charge;
  - (c) the priority of the KERP/KEIP Charge shall be subordinate to the Administration Charge and the Directors' Charge and rank in priority to all other encumbrances including the Interim Financing Charge;
  - (d) at the appropriate time and through the appropriate legal mechanism as determined by the Applicants in consultation with the Monitor and the Agent, the Applicants shall seek a Court-ordered release of claims (excluding claims that cannot be released pursuant to the CCAA) against the Applicants' directors and officers, including the Key Employees, following the closing of a Transaction; and
  - (e) such other terms as may be reasonably required by the Applicants, in consultation with the Monitor and the Agent.
- 6.2** The KERP/KEIP Letter in respect of John Stevens shall contain an additional term that, subsequent to the Outside Date, John Stevens shall make commercially reasonable efforts to provide the Applicants, Monitor and Agents' Advisors reasonable cooperation and support in connection with the closing of any pending Transaction or such other matters in connection with the CCAA that may arise up to and including November 30, 2020. John Stevens will not resign until the date that is the earlier of (i) granting of the CCAA Termination Order and (ii) November 30, 2020.

THIS IS EXHIBIT "C" REFERRED TO IN THE  
AFFIDAVIT OF JOHN STEVENS  
SWORN BEFORE ME THIS 16<sup>th</sup> DAY OF NOVEMBER, 2020



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A COMMISSIONER FOR OATHS IN AND FOR THE  
PROVINCE OF ALBERTA

MARK SIRY  
BARRISTER & SOLICITOR

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

<b>IN RE:</b>	§	
	§	<b>CASE NO. 20-32643</b>
<b>ENTREC CORPORATION, et al.,<sup>1</sup></b>	§	
	§	<b>(Chapter 15)</b>
<b>Debtors in a foreign proceeding.</b>	§	
	§	<b>JOINTLY ADMINISTERED</b>

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<b>WOLVERINE ENERGY AND INFRASTRUCTURE INC.,</b>	§	
	§	
	§	
<b>Plaintiff,</b>	§	
	§	
<b>VS.</b>	§	<b>ADVERSARY NO. _____</b>
	§	
<b>ENT CAPITAL CORP.,</b>	§	
<b>ENTREC HOLDINGS INC.,</b>	§	
<b>ENTREC CRANES &amp; HEAVY HAUL INC.,</b>	§	
<b>and ENTREC CORPORATION,</b>	§	
	§	
<b>Defendants.</b>	§	

**WOLVERINE ENERGY'S ADVERSARY COMPLAINT**

Plaintiff Wolverine Energy and Infrastructure Inc. ("Wolverine") files this Adversary Complaint against Defendants ENT Capital Corp., ENTREC Holdings Inc., ENTREC Cranes & Heavy Haul Inc., and ENTREC Corporation ("ENTREC" or the "Debtors") for breach of the court-approved Asset Purchase Agreement [Dkt. #54-5] dated August 24, 2020 (the "Asset Purchase Agreement"), refusal to return Wolverine's deposit, and for all damages, costs and fees for ENTREC's breach.

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<sup>1</sup> The Debtors in these Chapter 15 cases, along with the last four digits of the Debtors' unique identifier are: ENTREC Corporation (Ca. BN 2754); ENT Oilfield Group Ltd. (Ca BN 3917); Capstan Hauling Ltd. (Ca. BN 1535); ENT Capital Corp. (Ca. BN 5538); ENTREC Holdings Inc. (Tex. Secretary of State File No. 5531); ENTREC Cranes & Heavy Haul Inc. (EIN 2917); ENTREC Alberta Ltd. (Ca. BN 4135); ENTREC Services Ltd. (Ca. BN 9438).

**I.**  
**THE PARTIES**

1. Plaintiff Wolverine Energy and Infrastructure Inc. is a Canadian corporation with its principle place of business in Edmonton, Alberta, Canada. It was the "Buyer" under the Asset Purchase Agreement for the Debtors' assets.

2. Defendant ENT Capital Corp. is an Alberta (Canadian) corporation, Defendant ENTREC Holdings Inc. is a Texas corporation, Defendant ENTREC Cranes & Heavy Haul Inc. is a Texas corporation, and ENTREC Corporation is an Alberta (Canadian) corporation. Each of those entities is a Debtor in the above Jointly Administered case, and each is a "Seller" under the Asset Purchase Agreement for the sale of the Debtors' assets.

3. These Debtors may collectively be served with process pursuant to Section 10.6(b) of the Asset Purchase Agreement (and Rule 7004) "by delivery of a copy" of the citation "by US Mail postage prepaid" in accordance with the provisions of Section 10.4 at ENTREC Corporation, #201, 1 Carswell Street, St. Albert, AB T8N 7N5, Attention: Jason Vandenberg, CFO.<sup>2</sup> They may also be served by counsel of record in these proceedings: Mr. Steven A. Peirce, Norton Rose Fulbright US LLP, 111 West Houston Street, Suite 1800, Houston, Texas, 78205.

**II.**  
**JURISDICTION**

4. This is a core proceeding to the extent that it seeks remedy for the breach of an approved asset sale agreement of the Debtors. The Asset Purchase Agreement also stipulates that this U.S. Bankruptcy Court is the "exclusive jurisdiction to enforce the terms" of the Asset Purchase Agreement in Section 10.6 and waives all other courts of potentially competent

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<sup>2</sup> With a copy (which shall not constitute Notice) to: NERLAND LINDSEY LLP 1400, 350 – 7th Ave SW Calgary, AB T2P 3N9 Attention: Joe Brennan; and, HUNTON ANDREWS KURTH LLP, 600 Travis, Suite 4200, Houston, Texas 77002, Attention: Timothy A. Davidson II

jurisdiction. The Bankruptcy Court has jurisdiction over the subject matter under 28 U.S.C. §§1334(a) and (b), 157(b)(2)(I), Rule 4007 of the Federal Rules of Bankruptcy Procedure, and §523(a)(2), (a)(4) and (a)(6) of the Bankruptcy Code. This proceeding is brought as an adversary proceeding under Rule 7001 of the Federal Rules of Bankruptcy Procedure. Plaintiff requests damages as provided in the Asset Purchase Agreement, as well as the return of its deposit (which is specifically exempted from property of the estate in the Asset Purchase Agreement), costs, fees and interest.

5. Venue is proper in this district since this case was filed in this District and pursuant to 28 U.S.C. §1409(a) and (c), and the Asset Purchase agreement designates both Texas law and Texas venue as controlling.

### **III.** **PROCEDURAL BACKGROUND**

6. On or about May 15, 2020, (the "Filing Date"), Debtors filed Petitions for the Recognition of a Foreign Proceeding under chapter 15 of the Bankruptcy Code. Debtor's chapter 15 cases are now pending before the United States Bankruptcy Court for the Southern District of Texas, Houston Division, and are being jointly administered under the above caption.

7. As part of the liquidation and administration of the Debtors' estate, the Debtors petitioned this Court for – and obtained approval of – the Asset Purchase Agreement wherein ENTREC contracted to sell Wolverine substantially all of its assets. [Dkt. #54]. The Court held a hearing on that Asset Purchase Agreement and approved the sale on September 9, 2020. [Dkt. 68].

8. As part of that Asset Purchase Agreement, the Parties agreed that this Court "shall retain exclusive jurisdiction to enforce the terms of this Agreement and to decide any claims or disputes which may arise or result from, or be connected with, this Agreement, any breach or default hereunder, or the transactions contemplated hereby" and that "any and all proceedings

related to the foregoing shall be filed and maintained only in the U.S. Court, and the Parties hereby consent to and submit to the jurisdiction and venue of the U.S. Court" for all such actions. [Dkt. 54-4, at p. 27].

9. Days prior to the scheduled closing, ENTREC breached the Asset Purchase Agreement, refused to honor the field examination and price adjustment rights that were specifically negotiated in that contract, and then unilaterally attempted to add extracontractual closing terms on Wolverine (essentially, placing some \$2.3 million of Wolverine's money in an undefined "escrow" account for an indefinite period of time). After ENTREC refused to honor its obligations regarding the field examination of the assets, and unilaterally refused to appoint an independent appraiser to make a decision on the proposed price as required by Section 2.4 of the Asset Purchase Agreement, Wolverine was forced to terminate the Asset Purchase Agreement pursuant to Sections 7.2(a) and 3.4(c) and demand the return of its deposit under Section 2.3(b)(i)(C).

10. ENTREC refuses to return Wolverine's deposit, and Wolverine is therefore forced to file this adversary proceeding for the return of that deposit money, as well as its damages, costs, fees and interest.

#### **IV. FACTUAL BACKGROUND**

##### **A. The Court approves the Asset Purchase Agreement.**

11. ENTREC – like most debtors now in this Court – was in a tough spot. It needed to sell tangible assets and do so in short order to keep the administration of its insolvency proceeding apace. Wolverine was in the market for those assets, and the parties negotiated the Asset Purchase Agreement where ENTREC would sell, and Wolverine would buy many of those assets for \$33.5 million, **specifically subject** to inspection, appraisal and price adjustment rights.

12. The Asset Purchase Agreement, after all, was completed on an "emergency" basis

and Wolverine did not have sufficient time to inspect all of the assets and determine their value at the time of closing – thus, Sections 4.1 and 2.4 specifically allowed Wolverine to conduct a field examination of the assets and request a price reduction accordingly:

**4.1 Investigation by Buyer**

Until the Closing, Seller shall make reasonable efforts to furnish or make available to Buyer such information concerning and access to the Purchased Assets as shall be reasonably requested, including information as shall be necessary to enable Buyer to verify that the covenants of Seller contained in this Agreement have been complied with including such information and access as may be required for the Buyer to obtain, at its expense, a field exam confirming the existence and condition of the Purchased Assets in accordance with the most recently updated appraisal of Purchased Assets, such field exam to be completed no more than one week before the Closing Date. Notwithstanding anything herein to the contrary, no such investigation or examination shall be permitted to the extent that it would require Seller to disclose (i) due diligence questions, lists or investigations conducted by others, names, bids, letters of intent, expressions of interest, or other proposals received from others in connection with the transactions contemplated hereby or other information and analyses relating to such communications or (ii) information (A) subject to attorney-client privilege, (B) which would conflict with any confidentiality obligations to which the Seller bound or (C) in violation of applicable law. Buyer and its agents agree to abide by any safety rules or rules of conduct reasonably imposed by Seller with respect to such access and any information furnished to it or its representatives pursuant thereto.

13. Once that field examination was complete, Wolverine could elect to either require ENTREC to repair the assets or seek a price reduction under Section 2.4. If Wolverine requested a price reduction, then ENTREC was obligated to "retain" an independent qualified mechanic or appraiser to settle the issue and agree on a final price reduction number prior to closing:

## 2.4 Risk

Until completion of this Agreement on the Closing Date, the Purchased Assets shall be and remain at the risk of the Sellers. Based off a field exam to be conducted pursuant to Section 4.1 by the Buyer, in the event of any damage or unreasonable wear and tear of the Purchased Assets, as compared with the most recently updated appraisal of the Purchased Assets, on or before the Closing Date the Buyer may elect (i) to require the Sellers to repair the Purchased Assets to the same state and condition as it was in at the time this Agreement was entered into in which event the Buyer will complete the transaction without an abatement in the Purchase Price; or (ii) to reduce the Purchase Price by an amount equal to the cost required to complete the repair and/or any depreciations in value as a result of unreasonable wear and tear as estimated by an independent qualified mechanic, architect, equipment appraiser, or engineer retained by the Sellers in which event the Buyer will complete the transaction and accept the price reduction equal to such cost.

14. All of that, of course, is relatively standard in this type of asset purchase agreement where the buyer needs assurances that the assets are, in fact, worth the amount of money that is being paid. The same is true here.

**B. Wolverine conducts the field examination and the inspectors discover unreasonable wear on the assets in the amount of approximately \$2.3 million.**

15. Around late September and early October, Wolverine sent field inspectors to examine all of the assets and complete its investigation. During the course of those inspections, the inspectors determined that there was approximately \$2.3 million in unreasonable wear and tear on the assets. Wolverine provided notice to ENTREC of the issue and – as was its right under Section 2.4 of the Asset Purchase Agreement – requested a \$2.3 million price reduction on the Closing Price.

16. ENTREC categorically refused. Wolverine pointed out that – pursuant to the cited Section 2.4(ii) – if ENTREC disagreed with the field inspection, then it was obligated to "retain" an "independent qualified mechanic, architect, equipment appraiser, or engineers" to determine "the cost to complete the repair and/or any depreciation in value" and then "accept the price reduction equal to such cost." ENTREC again refused and demanded that Wolverine close at

the full purchase price. Instead, ETREC offered only to hold onto the \$2.3 million after closing with no commitment to either engage in the price reduction process required by the Asset Purchase Agreement or return Wolverine's money.

17. That, obviously, was unacceptable to Wolverine – it was purchasing the assets "as is/where is" and lost all rights to challenge their condition once the Asset Purchase Agreement closed. Thus, it asked several more times for ENTREC to honor the inspection and price reduction provisions of the Asset Purchase Agreement, before finally being forced to terminate it on or around September 30, 2020, and demanding ENTREC return its deposit.

C. **ENTREC refuses to return Wolverine's \$3.35 million CAD deposit despite defaulting under the Asset Purchase Agreement and is now selling the assets to another purchaser – Prolift Rigging.**

18. ENTREC, apparently, wants to have its cake and eat it too. After the Asset Purchase Agreement was terminated, it refused to refund Wolverine's deposit (which is specifically **not** part of the property of the Debtor's estate under Section 2.3(a) and fully refundable in this situation under Section 2.3(b)(C) due to ENTREC's breaches). To add insult to that injury, ENTREC immediately turned around and entered into a new contract to sell most of these same assets to Prolift Rigging Company, LLC in a new (pending) Court approved asset sale agreement. [Dkt. # 86]. ENTREC cannot have it both ways.

19. First, and foremost, ENTREC must return Wolverine's deposit (plus interest) pursuant to Section 2.3(b)(i)(C) & 2.3(b)(iv) of the Asset Purchase Agreement as Wolverine properly terminated due to ENTREC's refusal to honor its inspection and price adjustment obligations and ENTREC'S attempt to unilaterally add extra-contractual conditions to the Closing (and withhold approximately \$2.3 million of Wolverine's money indefinitely).

20. Second, ENTREC'S breaches caused Wolverine direct out of-pocket damages including nearly a million dollars in wasted costs, fees, inspection work, and lost opportunity.

Wolverine is entitled to be made whole under the terms of the Asset Purchase Agreement, including its costs, fees and interest. As ENTREC refuses to voluntarily honor its commitments made to Wolverine and approved by this Court, Wolverine is left with no choice but to file this Adversary Proceeding.

**V.**  
**CAUSES OF ACTION**

**A. Breach of contract:**

21. Plaintiff restates and realleges paragraphs 1 through 20 above.

22. Plaintiff Wolverine fully performed its duties under the Asset Purchase Agreement and stood ready, willing, and able to close.

23. ENTREC refused to honor the inspection and price adjustment provisions of the Asset Purchase agreement and sought to impose extra-contractual closing obligations on Wolverine, including unreasonably withholding approximately \$2.3 million of Wolverine's money after closing.

24. As a direct and proximate result of ENTREC's breach of contract and breach of warranties, Plaintiff Wolverine is entitled to the return of its deposit in the amount of \$3.35 million CAD (plus fees and interest) as well as all out of pocket and direct damages that flow from ENTREC's breach (currently estimated at \$1 million, exclusive of costs, fees and interest).

25. Plaintiff Wolverine is also entitled to an award of its reasonable and necessary attorneys' fees for breach of contract pursuant Section 38.001 *et. seq.* of the Texas Civil Practice & Remedies Code, and all conditions precedent to recovery have been satisfied.

26. Plaintiff Wolverine is also entitled to recover all pre-judgment interest and post-judgment interest allowed by law from the date of breach.

**B. Unjust Enrichment/Money Had and Received:**

27. Plaintiff restates and realleges paragraphs 1 through 20 above.

28. A claim for "money had and received" is equitable in nature and is a category of general assumpsit to restore money where equity and good conscience require refund.<sup>3</sup> A cause of action for money had and received is not premised on wrongdoing, but looks only to the justice of the case and inquires whether the defendant has received money which rightfully belongs to another."<sup>4</sup>

29. In short, it is an equitable doctrine applied to prevent unjust enrichment. To prove a claim for money had and received "a plaintiff must show that a defendant holds money which in equity and good conscience belongs to him."<sup>5</sup> The same is true here.

30. The claim is akin to, and overlaps with, the claim and remedy of unjust enrichment. That is, an implied contract basis for requiring restitution when it would be unjust to retain benefits received (which is either a remedy or an independent cause of action).<sup>6</sup> Regardless, both theories are applicable in this situation.

31. Here, and solely in the alternative, if ENTREC argues that the Asset Purchase Agreement does not expressly require it to return Wolverine's deposit, equity and good conscious requires them to do so. That is not ENTREC or the estate's money and it must be returned to its rightful owner.

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<sup>3</sup> *Stonebridge Life Ins. Co. v. Pitts*, 236 S.W.3d 201, 203 n.1 (Tex. 2007); *MGA Ins. Co. v. Charles R. Chesnutt, P.C.*, 358 S.W.3d 808, 813 (Tex. App.—Dallas 2012, no pet.).

<sup>4</sup> *Id.* (quoting *Amoco Prod. Co. v. Smith*, 946 S.W.2d 162, 164 (Tex. App.—El Paso 1997, no writ)).

<sup>5</sup> *Id.*

<sup>6</sup> *See, e.g., Sullivan v. Leor Energy, LLC*, 600 F.3d 542, 550 (5th Cir. 2010); *Elledge v. Friberg—Cooper Water Supply Corp.*, 240 S.W.3d 869, 870 (Tex. 2007); *Pepi Corp. v. Galliford*, 254 S.W.3d 457, 460 (Tex. App.—Houston [1st Dist.] 2007, pet. denied) ("Unjust enrichment is an independent cause of action.").

**VI.**  
**PRAYER**

**WHEREFORE**, Plaintiff Wolverine requests that the Debtors be cited to appear and answer in this case and that upon final trial, this Court enter an Order and grants judgment in favor of Plaintiff for the following:

1. all damages caused by ENTREC's breaches and action, including but not limited to the return of Wolverine's deposit and all other direct damages;
2. an award of pre-judgment and post-judgment interest;
3. reasonable and necessary attorney's fees, which shall be declared non-dischargeable;
4. costs of court;
5. Plaintiff shall be entitled to such writs and execution as is necessary to collect the judgment; and,
6. such other and further relief to which Plaintiff may justly be entitled.

Respectfully submitted,

By: /s/ James E. Rogers

**James E. Rogers**

Texas Bar No. 24051265

Southern District of Texas Federal ID: # 614580

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**ATTORNEYS FOR PLAINTIFF WOLVERINE  
ENERGY AND INFRASTRUCTURE INC.**

**OF COUNSEL:**

**AKERMAN LLP**

**David W. Parham**

Tex. Bar No. 15459500

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**Clarissa R. Medrano**

State Bar No. 24106296

Southern District of Texas Federal ID: 3412754

[clarissa.medrano@akerman.com](mailto:clarissa.medrano@akerman.com)

**CERTIFICATE OF SERVICE**

The undersigned, an attorney, hereby certifies that a true and correct copy of the foregoing document was served by the electronic case filing system on November 2, 2020, including the Debtors, their counsel, the U.S. Trustee and parties requesting notice by electronic case filing system.

*/s/ James E. Rogers* \_\_\_\_\_  
James E. Rogers

B104 (Rev. 2/92)		<b>ADVERSARY PROCEEDING COVER SHEET</b> (Instructions on Reverse)		ADVERSARY PROCEEDING NUMBER (Court Use Only)	
<b>PLAINTIFFS</b> WOLVERINE ENERGY AND INFRASTRUCTURE INC.  X			<b>DEFENDANTS</b> ENT CAPITAL CORP., ENTREC HOLDINGS INC., ENTREC CRANES & HEAVY HAUL INC., AND ENTREC CORPORATION		
ATTORNEYS (Firm Name, Address, and Telephone No.) James E. Rogers Akerman LLP 1300 Post Oak Blvd., Suite 2500 Houston, Texas 77056			ATTORNEYS (If Known) Steven A. Peirce Norton Rose Fulbright US LLP 111 West Houston Street, Suite 1800 Houston, Texas 78205		
<b>PARTY</b> (Check one box only) <input type="checkbox"/> 1 U.S. PLAINTIFF <input type="checkbox"/> 2 U.S. DEFENDANT <input type="checkbox"/> 3 U.S. NOT A PARTY					
<b>CAUSE OF ACTION</b> (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED)					
Adversary proceeding to recover deposit and for breach of contract/unjust enrichment.					
<b>NATURE OF SUIT</b> (Check the one most appropriate box only.)					
<input checked="" type="checkbox"/> <b>454</b> To recover money or property		<input type="checkbox"/> <b>455</b> To revoke an order of confirmation of a Chap. 11, Chap. 12, or Chap. 13 Plan		<input type="checkbox"/> <b>456</b> To obtain a declaratory judgment relating to any of the foregoing of action	
<input type="checkbox"/> <b>435</b> To determine validity, priority, or extent of a lien or other interest in property		<input type="checkbox"/> <b>426</b> To determine the dischargeability of a debt 11 U.S.C. § 523		<input type="checkbox"/> <b>459</b> To determine a claim or cause of action removed to a bankruptcy court	
<input type="checkbox"/> <b>458</b> To obtain approval for the sale of both the interest of the estate and of a co-owner in property		<input type="checkbox"/> <b>434</b> To obtain an injunction or other equitable relief		<input type="checkbox"/> <b>498</b> Other (specify)	
<input type="checkbox"/> <b>424</b> To object or to revoke a discharge 11 U.S.C. § 727		<input type="checkbox"/> <b>457</b> To subordinate any allowed claim or interest except where such subordina- tion is provided in a plan			
<b>ORIGIN OF PROCEEDINGS</b> (Check one box only.)		<input checked="" type="checkbox"/> 1 Original Proceeding <input type="checkbox"/> 2 Removed Proceeding <input type="checkbox"/> 4 Reinstated or Reopened		<input type="checkbox"/> 5 Transferred from Another Bankruptcy Court	
		<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23			
<b>DEMAND</b>		NEAREST THOUSAND \$ 3 Million		OTHER RELIEF SOUGHT Interest, costs and fees	
		<input type="checkbox"/> JURY DEMAND			
<b>BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES</b>					
NAME OF DEBTOR ENTREC CORPORATION, et al			BANKRUPTCY CASE NO. 20-32643		
DISTRICT IN WHICH CASE IS PENDING Southern District		DIVISIONAL OFFICE Houston Division		NAME OF JUDGE Judge Isgur	
<b>RELATED ADVERSARY PROCEEDING (IF ANY)</b>					
PLAINTIFF		DEFENDANT		ADVERSARY PROCEEDING NO.	
DISTRICT		DIVISIONAL OFFICE		NAME OF JUDGE	
<b>FILING FEE</b> (Check one box only.) <input type="checkbox"/> FEE ATTACHED <input type="checkbox"/> FEE NOT REQUIRED <input type="checkbox"/> FEE IS DEFERRED					
DATE 11/2/2020		PRINT NAME James E. Rogers		SIGNATURE OF ATTORNEY (OR PLAINTIFF) s/ James E. Rogers	

(Rev. 2/92)

### ADVERSARY PROCEEDING COVER SHEET (Reverse Side)

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This cover sheet must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney) and submitted to the clerk of the court upon the filing of a complaint initiating an adversary proceeding.

The cover sheet and the information contained on it *do not* replace or supplement the filing and service of pleadings or other papers as required by law, the Federal Rules of Bankruptcy Procedure, or the local rules of court. This form is required for the use of the clerk of the court to initiate the docket sheet and to prepare necessary indices and statistical records. A separate cover sheet must be submitted to the clerk of the court for each complaint filed. The form is largely self-explanatory.

**Parties.** The names of the parties to the adversary proceeding *exactly* as they appear on the complaint. Give the names and addresses of the attorneys if known. Following the heading "Party," check the appropriate box indicating whether the United States is a party named in the complaint.

**Cause of Action.** Give a brief description of the cause of action including all federal statutes involved. For example, "Complaint seeking damages for failure to disclose information, Consumer Credit Protection Act, 15 U.S.C. § 1601 et seq.," or "Complaint by trustee to avoid a transfer of property by the debtor, 11 U.S.C. § 544."

**Nature of Suit.** Place an "X" in the appropriate box. Only one box should be checked. If the cause fits more than one category of suit, select the most definitive.

**Origin of Proceedings.** Check the appropriate box to indicate the origin of the case:

1. Original Proceeding.
2. Removed from a State or District Court.
4. Reinstated or Reopened.
5. Transferred from Another Bankruptcy Court.

**Demand.** On the next line, state the dollar amount demanded in the complaint in thousands of dollars. For \$1,000 enter "1," for \$10,000 enter "10," for \$100,000 enter "100," if \$1,000,000, enter "1000." If \$10,000,000 or more, enter "9999." If the amount is less than \$1,000, enter "0001." If no monetary demand is made, enter "XXXX." If the plaintiff is seeking non-monetary relief, state the relief sought, such as injunction or foreclosure of a mortgage.

**Bankruptcy Case in Which This Adversary Proceeding Arises.** Enter the name of the debtor and the docket number of the bankruptcy case from which the proceeding now being filed arose. Beneath, enter the district and divisional office where the case was filed, and the name of the presiding judge.

**Related Adversary Proceedings.** State the names of the parties and the six digit adversary proceeding number from any adversary proceeding concerning the same two parties or the same property currently pending in any bankruptcy court. On the next line, enter the district where the related case is pending, and the name of the presiding judge.

**Filing Fee.** Check one box. The fee must be paid upon filing unless the plaintiff meets one of the following exceptions. The fee is not required if the plaintiff is the United States government or the debtor. If the plaintiff is the trustee or a debtor in possession, and there are no liquid funds in the estate, the filing fee may be deferred until there are funds in the estate. (In the event no funds are ever recovered for the estate, there will be no fee.) There is no fee for adding a party after the adversary proceeding has been commenced.

**Signature.** This cover sheet must be signed by the attorney of record in the box on the right of the last line of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is *pro se*, that is, not represented by an attorney, the plaintiff must sign.

The name of the signatory must be printed in the box to the left of the signature. The date of the signing must be indicated in the box on the far left of the last line.

# UNITED STATES BANKRUPTCY COURT

SOUTHERN

DISTRICT OF

TEXAS

**In re**  
ENTREC CORPORATION, ET AL

Bankruptcy Case No. 20-32643

**Debtor**

**Plaintiff**

**Defendants**

WOLVERINE ENERGY AND  
INFRASTRUCTURE INC.

Adversary Proceeding No.

ENT CAPITAL CORP., ENTREC HOLDINGS INC.,  
ENTREC CRANES & HEAVY HAUL INC., and  
ENTREC CORPORATION

## SUMMONS IN AN ADVERSARY PROCEEDING

YOU ARE SUMMONED and required to file a motion or answer to the complaint which is attached to this summons to the clerk of the bankruptcy court within 30 days after the date of issuance of this summons, except that the United States and its offices and agencies shall file a motion or answer to the complaint within 35 days.

Address of Clerk	Clerk, U.S. Bankruptcy Court P.O. Box 61010 Houston, Texas 77208
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At the same time, you must also serve a copy of the motion or answer upon the plaintiff's attorney.

Name and Address of Plaintiff's Attorney	James E. Rogers Akerman LLP 1300 Post Oak Blvd., Suite 2500 Houston, Texas 77056
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If you make a motion, your time to answer is governed by Fed. R. Bankr. P. 7012

**IF YOU FAIL TO RESPOND TO THIS SUMMONS, YOUR FAILURE WILL BE DEEMED TO BE YOUR CONSENT TO ENTRY OF A JUDGMENT BY THE BANKRUPTCY COURT AND JUDGMENT BY DEFAULT MAY BE TAKEN AGAINST YOU FOR THE RELIEF DEMANDED IN THE COMPLAINT.**

\_\_\_\_\_  
*Clerk of the Bankruptcy Court*

\_\_\_\_\_  
Date

By: \_\_\_\_\_

\_\_\_\_\_  
*Deputy Clerk*

**CERTIFICATE OF SERVICE**

I, \_\_\_\_\_, certify that I am, and at all times during the  
(name)

service of process was, not less than 18 years of age and not a party to the matter concerning which service of process was made. I further certify that the service of this summons and a copy of the complaint was made

\_\_\_\_\_ by:  
(date)

Mail service: Regular, first class United States mail, postage fully pre-paid, addressed to:

Personal Service: By leaving the process with defendant or with an officer or agent of defendant at:

Residence Service: By leaving the process with the following adult at:

Publication: The defendant was served as follows: [Describe briefly]

State Law: The defendant was served pursuant to the laws of the State of \_\_\_\_\_,  
as follows: [Describe briefly] (name of state)

Under penalty of perjury, I declare that the foregoing is true and correct.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

Print Name		
Business Address		
City	State	Zip

THIS IS EXHIBIT "D" REFERRED TO IN THE  
AFFIDAVIT OF JOHN STEVENS  
SWORN BEFORE ME THIS 16<sup>th</sup> DAY OF NOVEMBER, 2020



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A COMMISSIONER FOR OATHS IN AND FOR THE  
PROVINCE OF ALBERTA

MARK SIRY  
Barr. BARRISTER & SOLICITOR



**MILLER THOMSON**  
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November 9, 2020

**Delivered Via Mail**

**Asim Iqbal**  
Direct Line: 416.597.6008  
[aiqbal@millerthomson.com](mailto:aiqbal@millerthomson.com)

File: 144572.3

Dear Creditor:

**Re: In re ENTREC Corporation, Capstan Hauling Ltd., ENTREC Alberta Ltd., ENT Capital Corp., ENTREC Cranes & Heavy Haul Inc., ENTREC Holdings Inc., ENT Oilfield Group Ltd., and ENTREC Services Ltd.**

**Judicial Centre of Calgary, Action No. 2001 06423**

You are receiving this letter because you are listed as a creditor of ENTREC Corporation and/or one of its subsidiaries, listed in bold above (collectively, "ENTREC"). We are counsel to ENTREC.

You previously received a letter from us dated September 16, 2020. Our September 16, 2020 letter is enclosed for your ease of reference. Unless otherwise stated, all capitalized terms used in this letter are defined in our September 16, 2020 letter.

In our September 16 letter, we advised you that ENTREC had scheduled a hearing on October 5, 2020 to ask the Alberta Court to make an order granting a broad release in favour of ENTREC's current and former directors and officers of any and all claims (subject to some exceptions), including any claims you might have (in our September 16 letter, the "CCAA Release"). ENTREC adjourned (*i.e.*, delayed) its motion to the Alberta Court for the CCAA Release to, at that time, an undetermined date.

ENTREC has now rescheduled its motion to the Alberta Court for an order granting the CCAA Release to November 24, 2020 at 10:00 a.m.

In our September 16 letter, we enclosed a Schedule with the specific language of the CCAA Release we intended to ask the Alberta Court to grant, while reserving ENTREC's right to make any changes. This letter replaces the Schedule "A" to our September 16 letter with the current version of the CCAA Release. Please note the language may change at any time prior to the Court hearing, and only parties on the Service List will get notice of any such changes.

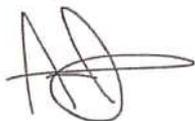
Please visit the Monitor's website for copies of the court materials after they are filed. If you wish to receive a copy of the materials directly, send an email to Mark Siry of Miller Thomson ([msiry@millerthomson.com](mailto:msiry@millerthomson.com)) and request to be put on the "Service List". We will need your email address and full name. You may wish to retain legal advice regarding your specific rights and concerns in connection with ENTREC's intended application.

If you wish to discuss this letter, you may contact the undersigned or the Monitor at [entrec@alvarezandmarsal.com](mailto:entrec@alvarezandmarsal.com) or 1-888-368-7311. We anticipate serving any additional court materials and posting same on the Monitor's website on or about November 16, 2020.

Yours truly,

MILLER THOMSON LLP

Per:

A handwritten signature in black ink, appearing to be 'AI', with a long horizontal flourish extending to the right.

Asim Iqbal  
AI/sg





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September 16, 2020

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Direct Line: 416.597.6008  
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File: 144572.3

Dear Creditor:

**Re: In re ENTREC Corporation, Capstan Hauling Ltd., ENTREC Alberta Ltd., ENT Capital Corp., ENTREC Cranes & Heavy Haul Inc., ENTREC Holdings Inc., ENT Oilfield Group Ltd., and ENTREC Services Ltd.**

**Judicial Centre of Calgary, Action No. 2001 06423**

You are receiving this letter because you are listed as a creditor of ENTREC Corporation and/or one of its subsidiaries, as listed above (collectively, "ENTREC"). We are counsel to ENTREC.

As you may know, on May 15, 2020, ENTREC was granted creditor protection by the Alberta Court of Queen's Bench under the *Companies' Creditors Arrangement Act* (the "CCAA"). ENTREC's CCAA proceeding was also recognized by the United States Bankruptcy Court in the Southern District of Texas under Chapter 15 of the US Bankruptcy Code.

As part of ENTREC's CCAA proceedings, the Alberta Court appointed Alvarez & Marsal Canada Inc. to act as ENTREC's Court-appointed Monitor.

The Monitor maintains a website for this case, which is where you can find copies of all of the Canadian court materials that have been filed in ENTREC's CCAA proceeding, as well as all of the orders granted by the Alberta Court. The URL for the Monitor's case website is <https://www.alvarezandmarsal.com/entrec>.

In the United States, the US Court appointed Stretto to act as ENTREC's agent for notice of the Chapter 15 proceeding. Stretto maintains a website where you can find court and other materials for ENTREC's Chapter 15 proceeding in the United States. The URL for Stretto's case website is <https://cases.stretto.com/entrec>. If you haven't already, we encourage you to visit the case websites.

At this time, ENTREC has sold substantially all of its assets in both Canada and the United States to various third parties under a court-supervised and approved sale process. Copies of the sale process order and the court orders approving the various transactions on the Monitor's website.

We expect the transactions to close in the near term, at which point ENTREC will be wound up. As part of that wind-up process, ENTREC intends to apply to the Alberta Court and the US Court for an order granting a broad release in favour of ENTREC's directors and officers of all claims of any kind against them, known or unknown, contingent or liquidated, by any person, including any claim against ENTREC's directors and officers that the debtor and

creditors (including you) may have, to the extent permissible under the CCAA and not covered by ENTREC's existing directors' and officers' liability insurance (the "CCAA Release"). Enclosed as Schedule "A" to this letter is the language of the CCAA Release. The enclosed is for reference only and remains subject to further changes.

We are writing this letter to give you advance notice of ENTREC's intention to apply for the CCAA Release. In due course, ENTREC will be serving and filing court materials in support of the CCAA Release to parties who are on the Service List. Instructions to be included on the Service List are below.

ENTREC has booked court time in Calgary for Monday, October 5, 2020 at 2:00 Mountain Time for the application seeking a CCAA Release. At that time, ENTREC will also seek an order establishing a procedure to terminate this CCAA proceeding, and other miscellaneous relief. ENTREC intends to apply to the US Court to seek recognition of the CCAA Release. A court date has not been set at this time. The court materials for the US proceedings will be available on Stretto's case website.

Please visit the Monitor's website for copies of the court materials after they are filed. If you wish to receive a copy of the materials directly, send an email to Mark Siry of Miller Thomson ([msiry@millerthomson.com](mailto:msiry@millerthomson.com)) and request to be put on the "Service List". We will need your email address and full name. You may wish to retain legal advice regarding your specific rights and concerns in connection with ENTREC's intended application.

If you wish to discuss this letter, you may contact the undersigned or the Monitor at [entrec@alvarezandmarsal.com](mailto:entrec@alvarezandmarsal.com) or 1-888-368-7311. We anticipate serving the court materials and posting same on the Monitor's website on or about September 28, 2020.

Yours truly,

MILLER THOMSON LLP

Per:

A handwritten signature in black ink, appearing to be 'Asim Iqbal', written over a horizontal line.

Asim Iqbal  
AI/sg



### Schedule "A"

The definitions of the following terms are as follows:

- (a) **"D&O Claims"** means any and all demands, claims (including claims for contribution and indemnity), actions, causes of action, counterclaims, suits, debts, sums of money, liabilities, accounts, covenants, damages, judgments, orders (including orders for injunctive relief or specific performance and compliance orders), expenses, executions, encumbrances and recoveries on account of any liability, obligation, demand or cause of action of whatever nature that any creditor or any other person has or may be entitled to assert (including for, in respect of or arising out of environmental matters, pensions or post-employment benefits), whether known or unknown, matured or unmatured, contingent or actual, direct, indirect or derivative, at common law, in equity or under statute, foreseen or unforeseen, existing or hereafter arising, based in whole or part on any act, omission, transaction, duty, responsibility, indebtedness, liability, obligation, dealing, matter or occurrence existing or taking place at or prior to the date of this Order that in any way relates to or arises out of or is in connection with the assets, obligations, business or affairs of the Applicants, the CCAA proceedings or any matter or transaction involving any of the members of the Applicants occurring or in connection with the CCAA proceeding;
  - (b) **"Directors and Officers"** means the Applicants' current and former directors and officers, but not the current directors and officers of ENTREC Alberta Ltd. set out in Exhibit B of the Affidavit of John Stevens sworn September 28, 2020 (for a copy, please visit the Monitor's website)
  - (c) **"Insured Claims"** means any D&O Claims that are covered by an applicable insurance policy of the Applicants', but only to the extent of any such available insurance.
2. Save and except any Insured Claims, any and all D&O Claims shall be and shall be deemed to be fully, finally and irrevocably and forever compromised, released, discharged, canceled and barred, and the ability of any person to proceed against any other person in respect of or relating to D&O Claims, whether directly, indirectly, derivatively or otherwise is hereby forever discharged, enjoined and restrained, and all proceedings with respect to, in connection with or relating to D&O Claims are hereby permanently stayed, provided that nothing in this paragraph shall waive, discharge, release, cancel or bar any claim against the Directors and Officers that is not permitted to be released pursuant to s. 5.1(2) of the CCAA.
  3. Notwithstanding [*the paragraph 2 above*], Insured Claims shall not be compromised, released, discharged, cancelled or barred by this Order, and any person having an



Insured Claim shall be irrevocably limited to recovery in respect of such Insured Claim solely from the proceeds of the applicable insurance policies, and persons with Insured Claims shall have no right to, and shall not, directly or indirectly, seek any recoveries in respect thereof from the Applicants or the Directors and Officers, other than enforcing such person's rights to be paid by the applicable insurer(s) from the proceeds of the applicable insurance policies.

