

COURT FILE NUMBER:

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE OF CALGARY



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

**AND IN THE MATTER OF A PLAN OF  
COMPROMISE OR ARRANGEMENT OF  
ENDURANCE ENERGY LTD.**

DOCUMENT:

**AMENDED AND RESTATED  
CCAA INITIAL ORDER**

ADDRESS FOR SERVICE AND  
CONTACT INFORMATION OF  
PARTY FILING THIS DOCUMENT

**Thornton Grout Finnigan LLP**  
100 Wellington Street W, Suite 3200  
Toronto, Ontario M5K 1K7

Telephone: (416) 304-1616  
Facsimile: (416) 304-1313

I hereby certify this to be a true copy of  
the original order

Dated this 15<sup>th</sup> day of June 2016

[Signature]  
for Clerk of the Court

**Attention: Robert I. Thornton/ Leanne Williams /  
Rachel Bengino**  
File Number: 1751-001

**DATE ON WHICH ORDER WAS PRONOUNCED:** May 30, 2016, as amended and restated on June 8, 2016

**NAME OF JUDGE WHO MADE THIS ORDER:** The Honourable Justice Horner

**LOCATION OF HEARING:** Calgary, Alberta

**UPON** the application of **Endurance Energy Ltd.** (the "**Applicant**"); **AND UPON** having read the Originating Application, the Affidavit of Steven VanSickle; and the Affidavit of Service; **AND UPON** reading the consent of FTI Consulting Canada Inc. ("**FTI**") to act as Monitor; and the pre-filing report of FTI; and upon noting that the secured creditors who are likely to be affected by the charges created herein have been provided notice of this application and either do not oppose or alternatively consent to the within Order; **AND UPON** having read the additional materials filed in conjunction with the hearings on June 6, 2016 and June 8, 2016; **AND UPON** hearing counsel for the Applicant, counsel for the Monitor, counsel for the Interim Lender, and counsel to the Lenders and each of them, and of any other party appearing at the application, **IT IS HEREBY ORDERED AND DECLARED THAT:**

#### **SERVICE**

1. The time for service of the notice of application for this order is hereby abridged and deemed good and sufficient and this application is properly returnable today.

#### **APPLICATION**

2. The Applicant is a company to which the CCAA applies.

#### **PLAN OF ARRANGEMENT**

3. The Applicant shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**").

#### **POSSESSION OF PROPERTY AND OPERATIONS**

4. The Applicant shall:
  - (a) remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**");
  - (b) subject to further order of this Court, continue to carry on business in a manner consistent with the preservation of its business (the "**Business**") and Property; and

- (c) be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.
- 5. To the extent permitted by law, the Applicant shall be entitled but not required to pay the following expenses, incurred prior to or after this Order:
  - (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and
  - (b) the fees and disbursements of any Assistants retained or employed by the Applicant in respect of these proceedings, at their standard rates and charges.
- 6. Except as otherwise provided to the contrary herein, the Applicant shall be entitled but not required to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:
  - (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and
  - (b) payment for goods or services actually supplied to the Applicant following the date of this Order.
- 7. The Applicant shall remit, in accordance with legal requirements, or pay:
  - (a) any statutory deemed trust amounts in favour of the Crown in Right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of:

- (i) employment insurance,
- (ii) Canada Pension Plan, and
- (iv) income taxes,

but only where such statutory deemed trust amounts arise after the date of this Order, or are not required to be remitted until after the date of this Order, unless otherwise ordered by the Court;

- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order; and
- (c) any amount payable to the Crown in Right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicant.

8. Until a real property lease is disclaimed or resiliated in accordance with the CCAA, the Applicant may pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable as rent to the landlord under the lease) based on the terms of existing lease arrangements or as otherwise may be negotiated by the Applicant from time to time for the period commencing from and including the date of this Order ("**Rent**"), but shall not pay any rent in arrears.
9. Except as specifically permitted in this Order, the Applicant is hereby directed, until further order of this Court:

- (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant to any of its creditors as of the date of this Order;
- (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and
- (c) not to grant credit or incur liabilities except in the ordinary course of the Business.

## **RESTRUCTURING**

10. The Applicant shall subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as hereinafter defined in paragraph 39), have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of its business or operations and to dispose of redundant or non-material assets not exceeding \$500,000 in any one transaction or \$1,000,000 in the aggregate, provided that any sale that is either (i) in excess of the above thresholds, or (ii) in favour of a person related to the Applicant (within the meaning of section 36(5) of the CCAA), shall require authorization by this Court in accordance with section 36 of the CCAA;
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate on such terms as may be agreed upon between the Applicant and such employee, or failing such agreement, to deal with the consequences thereof in the Plan; and
- (c) pursue all avenues of refinancing of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

all of the foregoing to permit the Applicant to proceed with an orderly restructuring of the Business (the "**Restructuring**").

11. The Applicant shall provide each of the relevant landlords with notice of the Applicant's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal. If the landlord

disputes the Applicant's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicant, or by further order of this Court upon application by the Applicant on at least two (2) days' notice to such landlord and any such secured creditors. If the Applicant disclaims or resiliates the lease governing such leased premises in accordance with section 32 of the CAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in section 32(5) of the CCAA, and the disclaimer or resiliation of the lease shall be without prejudice to the Applicant's claim to the fixtures in dispute.

12. If a notice of disclaimer or resiliation is delivered pursuant to section 32 of the CCAA, then:
  - (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicant and the Monitor 24 hours' prior written notice; and
  - (b) at the effective time of the disclaimer or resiliation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicant in respect of such lease or leased premises and such landlord shall be entitled to notify the Applicant of the basis on which it is taking possession and to gain possession of and re-lease such leased premises to any third party or parties on such terms as such landlord considers advisable, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

#### **NO PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY**

13. Until and including **June 29, 2016**, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court (each, a "**Proceeding**"), shall be commenced or continued against or in respect of the Applicant or the Monitor, or

affecting the Business or the Property, except with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended pending further order of this Court.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

14. During the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**"), whether judicial or extra-judicial, statutory or non-statutory against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended and shall not be commenced, proceeded with or continued except with leave of this Court, provided that nothing in this Order shall:
  - (a) empower the Applicant to carry on any business which the Applicant is not lawfully entitled to carry on;
  - (b) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by section 11.1 of the CCAA;
  - (c) prevent the filing of any registration to preserve or perfect a security interest; or
  - (d) prevent the registration of a claim for lien.
15. Nothing in this Order shall prevent any party from taking an action against the Applicant where such an action must be taken in order to comply with statutory time limitations in order to preserve their rights at law, provided that no further steps shall be taken by such party except in accordance with the other provisions of this Order, and notice in writing of such action be given to the Monitor at the first available opportunity.
16. All creditors of the Applicant are hereby temporally stayed from exercising any right to consolidate accounts, with respect to any amounts deposited into any bank accounts of the Applicant on or after the date hereof without further and prior order of this Court upon proper and sufficient notice to the Applicant and the Monitor.



## **NO INTERFERENCE WITH RIGHTS**

17. During the Stay Period, no person shall accelerate, suspend, discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicant, except with the written consent of the Applicant and the Monitor, or leave of this Court.

## **CONTINUATION OF SERVICES**

18. During the Stay Period, all persons having:
- (a) statutory or regulatory mandates for the supply of goods and/or services; or
  - (b) oral or written agreements or arrangements with the Applicant, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, services, utility or other services to the Business or the Applicant

are hereby restrained until further Order of this Court from discontinuing, altering, interfering with, suspending or terminating the supply of such goods or services as may be required by the Applicant or exercising any other remedy provided under such agreements or arrangements. The Applicant shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the usual prices or charges for all such goods or services received after the date of this Order are paid by the Applicant in accordance with the payment practices of the Applicant, or such other practices as may be agreed upon by the supplier or service provider and each of the Applicant and the Monitor, or as may be ordered by this Court. Nothing in this Order has the effect of prohibiting a person from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order.

19. Without limiting the generality of the foregoing, if applicable, cash or cash equivalents placed on deposit by the Applicant with any Person during the Stay Period, whether in an operating account or otherwise for itself or for another entity, with the exception of the funds held in escrow by Thornton Grout Finnigan LLP in favour of BMO Nesbitt Burns Inc. (the “**Financial Advisor**”), shall not be applied by such Person in reduction or



repayment of amounts owing to such Person as of the date of the Order or due on or before the expiry of the Stay Period or in satisfaction of any interest or charges accruing in respect thereof; however, this provision shall not prevent any financial institution from: (i) reimbursing itself for the amount of any cheques drawn by Petitioner and properly honoured by such institution, or (ii) holding the amount of any cheques or other instruments deposited into the Petitioner's account until those cheques or other instruments have been honoured by the financial institution on which they have been drawn.

#### **NO OBLIGATION TO ADVANCE MONEY OR EXTEND CREDIT**

20. Notwithstanding anything else contained in this Order, no creditor of the Applicant shall be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant.

#### **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

21. During the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA and paragraph 15 of this Order, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicant with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicant whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicant, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicant or this Court.

#### **DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE**

22. The Applicant shall indemnify its directors and officers against obligations and liabilities that they may incur as directors and or officers of the Applicants after the commencement of the within proceedings except to the extent that, with respect to any officer or director, the obligation was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

23. The directors and officers of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of \$1,000,000, as security for the indemnity provided in paragraph 20 of this Order. The Directors' Charge shall have the priority set out in paragraph 43 herein.
24. Notwithstanding any language in any applicable insurance policy to the contrary:
  - (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge; and
  - (b) the Applicant's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 20 of this Order.

#### **FINANCIAL ADVISORS**

25. The sealed Engagement Letter between the Applicants and the Financial Advisor dated March 24, 2016 (the "**BMO Engagement Letter**"), is hereby ratified, confirmed and approved and the Applicant is authorized and directed to continue the engagement of the Financial Advisor on the terms and conditions, whether for payment of fees, expenses, indemnities or otherwise, as set out therein. The Financial Advisor is hereby granted a charge within the Administration Charge (as defined herein) with respect to its fees, expenses and indemnity incurred or earned under the BMO Engagement Letter in the sum and priority as set out in paragraphs 36, 43 and 45 herein.

#### **SEALING ORDER**

26. The BMO Engagement Letter shall be sealed on the Court file and not form part of the public record.

27. The Clerk of this Honourable Court shall file the BMO Engagement Letter in a sealed envelope attached to a notice that sets out the style of cause of these proceedings and states that:

THIS ENVELOPE CONTAINS CONFIDENTIAL MATERIALS FILED BY ENDURANCE ENERGY LTD.; and

THE CONFIDENTIAL MATERIALS ARE SEALED PURSUANT TO THE SEALING ORDER ISSUED BY THE HONOURABLE JUSTICE HORNER ON MAY 30, 2016.

28. The Applicant is empowered and authorized, but not directed, to provide the BMO Engagement Letter (or any portion thereof, or information contained therein) to any interested party, entity or person with the written consent of BMO that the Applicant considers reasonable in the circumstances and subject to confidentiality arrangements satisfactory to the Applicant.

#### **APPOINTMENT OF MONITOR**

29. FTI is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the Property, Business and financial affairs and the Applicant with the powers and obligations set out in the CCAA or set forth herein and that the Applicant and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicant pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.
30. The Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:
- (a) monitor the Applicant's receipts and disbursements, Business and dealings with the Property;
  - (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein and immediately report

to the Court if in the opinion of the Monitor there is a material adverse change in the financial circumstances of the Applicant;

- (c) assist the Applicant, to the extent required by the Applicant, in its dissemination to the Interim Lender and its counsel on a periodic basis of financial and other information as agreed to between the Applicant and the Interim Lender which may be used in these proceedings, including reporting on a basis as reasonably required by the Interim Lender;
- (d) advise the Applicant in its preparation of the Applicant's cash flow statements and reporting required by the Interim Lender, which information shall be reviewed with the Monitor and delivered to the Interim Lender and its counsel on a periodic basis, but not less than fourteen days, or as otherwise agreed to by the Interim Lender;
- (e) advise the Applicant in its development of the Plan and any amendments to the Plan;
- (f) advise the Applicant, to the extent required by the Applicant, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form and other financial documents of the Applicant to the extent that is necessary to adequately assess the Applicant's Property, Business and financial affairs or to perform its duties arising under this Order;
- (h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;
- (i) hold funds in trust or in escrow, to the extent required, to facilitate settlements between the Applicants and any other Person; and
- (j) report to and respond to inquiries of Canadian Imperial Bank of Commerce, in its capacity as agent (the "**Agent**") to a syndicate of lenders (the "**Lenders**") (or the Agent's designated financial advisor) under that credit agreement dated as of June

27, 2013, as amended from time to time (the “**Credit Agreement**”) among the Agent, the Lenders and the Applicant with respect to the CCAA proceedings with or without the presence or the consent of the Applicant, however copies of any written reports provided to the Agent by the Monitor shall be provided to the Applicant; and

- (j) perform such other duties as are required by this Order or by this Court from time to time.
31. The Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, or by inadvertence in relation to the due exercise of powers or performance of duties under this Order, be deemed to have taken or maintain possession or control of the Business or Property, or any part thereof. Nothing in this Order shall require the Monitor to occupy or to take control, care, charge, possession or management of any of the Property that might be environmentally contaminated, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal or waste or other contamination, provided however that this Order does not exempt the Monitor from any duty to report or make disclosure imposed by applicable environmental legislation.
32. The Monitor shall provide any creditor of the Applicant and the Interim Lender with information provided by the Applicant in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicant is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.

33. In addition to the rights and protections afforded to the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.
34. The Monitor, counsel to the Monitor, counsel and financial advisor to the Lenders (collectively, the "**Lenders' Advisors**") and counsel to the Applicant shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicant as part of the costs of these proceedings. The Applicant is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor, the Lenders' Advisors, and counsel for the Applicant on a bi-weekly basis and, in addition, the Applicant is hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Applicant, retainers in the amounts of \$250,000 each to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.
35. The Monitor and its legal counsel shall pass their accounts from time to time.
36. The Monitor, counsel to the Monitor, the Financial Advisor and the Applicant's counsel, as security for the professional fees and disbursements incurred both before and after the granting of this Order and the Lenders' Advisors as security for the professional fees and disbursements incurred after the granting of this Order, shall be entitled to the benefits of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$1,500,000, as security for their professional fees and disbursements incurred at the normal rates and charges of such professionals. The Administration Charge shall have the priority set out in paragraphs 43 and 45 hereof.

#### **INTERIM FINANCING**

37. The Applicant is hereby authorized and empowered to obtain and borrow under a credit facility from WP Private Equity XI Inc. (the "**Interim Lender**") in order to finance the Applicant's working capital requirements and other general corporate purposes and

capital expenditures, provided that borrowings under such credit facility shall not exceed USD\$ 15,000,000, unless permitted by further order of this Court.

38. Such credit facility shall be on the terms and subject to the conditions set forth in the commitment letter between the Applicant and the Interim Lender dated as of May 30, 2016 (the "**Commitment Letter**"), filed.
39. The Applicant is hereby authorized and empowered to execute and deliver such credit agreements and other definitive documents (collectively, the "**Definitive Documents**"), as are contemplated by the Commitment Letter or as may be reasonably required by the Interim Lender pursuant to the terms thereof, and the Applicant is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the Interim Lender under and pursuant to the Commitment Letter and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.
40. The Interim Lender shall be entitled to the benefits of and is hereby granted a charge (the "**Interim Lender's Charge**") on the Property to secure all obligations under the Definitive Documents and Commitment Letter incurred on or after the date of this Order, which charge shall only secure amounts advanced on or after the date of this Order under the Definitive Documents and the Commitment Letter and all other amounts owing pursuant to the Definitive Documents and the Commitment Letter. The Interim Lender's Charge shall have the priority set out in paragraphs 43 and 45 hereof.
41. Notwithstanding any other provision of this Order:
  - (a) the Interim Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the Interim Lender's Charge or any of the Commitment Letter and/or the Definitive Documents;
  - (b) upon the occurrence of an event of default under the Commitment Letter and/or the Definitive Documents or the Interim Lender's Charge, the Interim Lender, upon reasonable notice to the Applicant and the Monitor, may apply to this Court for leave to exercise any and all of its rights and remedies against the Applicant or



the Property under or pursuant to the Commitment Letter, Definitive Documents, the Interim Lender's Charge or at Law, including without limitation, to cease making advances to the Applicant and set off and/or consolidate any amounts owing by the Interim Lender to the Applicant against the obligations of the Applicant to the Interim Lender under the Commitment Letter, the Definitive Documents or the Interim Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicant and for the appointment of a trustee in bankruptcy of the Applicant, without the Interim Lender having to send any prior notices or demands, including under section 244 of the *Bankruptcy and Insolvency Act* of Canada (the "BIA"); and

- (c) the foregoing rights and remedies of the Interim Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicant or the Property.

- 42. The claims of the Interim Lender pursuant to the Commitment Letter and the Definitive Documents shall not be compromised or arranged pursuant to any plan or arrangement or compromise filed by the Applicant under the CCAA, or any proposal filed by the Applicant under the BIA, and the Interim Lender shall be treated as unaffected in any such plan of arrangement or compromise, or any such proposal filed by the Applicant , with respect to any advances made under the Commitment Letter and/or the Definitive Documents.

#### **VALIDITY AND PRIORITY OF CHARGES**

- 43. The priorities of the Directors' Charge, the Administration Charge and the Interim Lender's Charge, as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$1,500,000);

Second – Interim Lender's Charge (to the maximum amount of USD \$20,000,000); and

Third – Directors' Charge (to the maximum amount of \$1,000,000).

44. The filing, registration or perfection of the Directors' Charge, the Administration Charge or the Interim Lender's Charge (collectively, the "**Charges**") shall not be required, and the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.
45. Each of the Directors' Charge, the Administration Charge and the Interim Lender's Charge (all as constituted and defined herein) shall constitute a charge on the Property and subject always to section 34(11) of the CCAA such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person.
46. Except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Directors' Charge, the Administration Charge or the Interim Lender's Charge, unless the Applicant also obtains the prior written consent of the Monitor, the Interim Lender and the beneficiaries of the Directors' Charge and the Administration Charge, or further order of this Court.
47. The Directors' Charge, the Administration Charge, the Commitment Letter, the Definitive Documents and the Interim Lender's Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") and/or the Interim Lender thereunder shall not otherwise be limited or impaired in any way by:
  - (a) the pendency of these proceedings and the declarations of insolvency made in this Order;
  - (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications;
  - (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA;
  - (d) the provisions of any federal or provincial statutes; or

- (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:
  - (i) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of any documents in respect thereof, including the Commitment Letter or the Definitive Documents, shall create or be deemed to constitute a new breach by the Applicant of any Agreement to which it is a party;
  - (ii) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges, or the the Applicant entering into the Commitment Letter, or execution, delivery or performance of the Definitive Documents; and
  - (iii) the payments made by the Applicant pursuant to this order, including the Commitment Letter or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct or other challengeable or voidable transactions under any applicable law.

#### **ALLOCATION**

- 48. Any interested Person may apply to this Court on notice to any other party likely to be affected, for an order to allocate the Administration Charge, the Interim Lender's Charge and the Directors' Charge amongst the various assets comprising the Property.

#### **SERVICE AND NOTICE**

- 49. The Monitor shall (i) without delay, publish in the Globe and Mail (National Edition) a notice containing the information prescribed under the CCAA; (ii) within five (5) days after the date of this Order (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known

creditor who has a claim against the Applicant of more than \$1,000 and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with section 23(1)(a) of the CCAA and the regulations made thereunder.

50. The Applicant and the Monitor shall be at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery, facsimile transmission or e-mail to the Applicant's creditors or other interested Persons at their respective addresses as last shown on the records of the Applicant and that any such service or notice by courier, personal delivery, facsimile transmission or e-mail shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing. The Monitor shall establish and maintain a website in respect of these proceedings at <http://cfcanada.fticonsulting.com/endurance> and shall post there as soon as practicable:

- (a) all materials prescribed by statute or regulation to be made publically available; and
- (b) all applications, reports, affidavits, orders or other materials filed in these proceedings by or behalf of the Monitor, or served upon it, except such materials as are confidential and the subject of a sealing order or pending application for a sealing order.

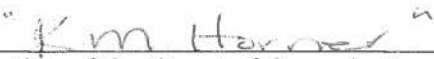
#### **GENERAL**

51. The Applicant or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

52. Notwithstanding Rule 6.11 of the *Alberta Rules of Court*, unless otherwise ordered by this Court, the Monitor will report to the Court from time to time, which reporting is not required to be in affidavit form and shall be considered by this Court as evidence.

53. Nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicant, the Business or the Property.
54. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.
55. Each of the Applicant and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order and that the Monitor is authorized and empowered to act as a representative in respect of the within proceeding for the purpose of having these proceedings recognized in a jurisdiction outside Canada.
56. In the event that the Lenders intend to object to any provision of this Order, as a result of their not having been given proper notice of the Application to obtain this Order, they must advise counsel to the Applicant in writing of such intention on or before 5:00 p.m. Mountain Daylight Time on June 1, 2016. Such notice must particularize the nature of the proposed objection. At any subsequent hearing to address the Lenders' objections, the Applicant will bear the burden of proving its entitlement to such specific relief objected to by the Lenders.
57. Any interested party (including the Applicant and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

58. This Order and all of its provisions are effective as of 12:01 a.m. Mountain Daylight Time on the date of this Order.

  
Justice of the Court of Queen's Bench of Alberta