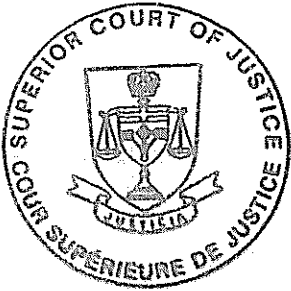


ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.) THURSDAY, THE
)
JUSTICE MORAWETZ) 2nd DAY OF JULY, 2009



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 INDALEX LIMITED, INDALEX
HOLDINGS (B.C.) LTD., 6326765 CANADA INC. and
NOVAR INC.

BIDDING PROCEDURES ORDER

THIS MOTION, made by Indalex Limited, Indalex Holdings (B.C.) Ltd., 6326765 Canada Inc. and Novar Inc. (the "Applicants") for an Order:

- a) approving the bidding procedures attached hereto as Schedule "A" (the "Bidding Procedures") to be used in conjunction with the proposed conduct of a Court supervised Stalking Horse Process (as defined herein) for the sale of the assets of Indalex Holdings Finance, Inc., Indalex Holding Corp., Indalex Inc., Caradon Lebanon, Inc., Dolton Aluminum Company, Inc. (the "U.S. Debtors") and the Applicants (except Novar Inc.) (collectively, the "Canadian Debtors" and, together with the US Debtors, the "Debtors");
- b) deeming the Asset Purchase Agreement dated as of June 16, 2009 by and among Sapa Holding AB (the "Stalking Horse Bidder") and the Debtors (the "APA"), attached to the affidavit of Fred Fazio sworn June 29, 2009 (the "Fazio Affidavit"), to be a Qualified Bid (as defined in the Bidding Procedures) and accepted for the purposes of conducting the Stalking Horse Process; and

- c) approving and authorizing the payment of the Break Fee (as such term as defined in the APA) in the manner provided for in the APA, in conjunction with the Stalking Horse Process;

was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the material filed, including the Notice of Motion, the Fazio Affidavit, and the Sixth Report of FTI Consulting Canada ULC (the "Monitor") dated June 29, 2009, and on hearing the submissions of counsel for the Applicants, counsel for the Monitor, counsel for the Stalking Horse Bidder and counsel for the JPMorgan Chase Bank, N.A., and on being advised that the Applicants' Service List was served with the Motion Record herein;

1. **THIS COURT ORDERS** that all capitalized terms used herein and not otherwise defined shall have the meaning given to them in the APA or the Bidding Procedures.
2. **THIS COURT ORDERS** that the Bidding Procedures are hereby approved and, subject to approval of the Bidding Procedures in substantially the same form by the United States Bankruptcy Court for the District of Delaware in the Bankruptcy Cases of the U.S. Debtors, the Applicants shall be authorized to solicit Bids for the Canadian Acquired Assets and conduct the Auction as contemplated therein (the "Stalking Horse Process").
3. **THIS COURT ORDERS** that the APA is hereby deemed to be a Qualified Bid and accepted solely for the purposes of conducting the Stalking Horse Process.
4. **THIS COURT ORDERS** that the provisions of the APA providing for payment of the Break Fee are hereby authorized and approved and the Applicants are hereby authorized and directed to pay, in accordance with section 11.3(b) of the APA, their *pro rata* share of the Break Fee to the Stalking Horse Bidder in the event that the APA is terminated in accordance with section 11.1(b)(ii) thereof. The Applicants' *pro rata* share of the Break Fee will be paid by the Applicants to the Stalking Horse Bidder from the proceeds of an Alternate Transaction as provided for in the APA.
5. **THIS COURT ORDERS** that nothing herein approves the sale of the Canadian Acquired Assets on the terms set out in the APA and that the validity of any sale of the Canadian Acquired Assets will be determined on a subsequent motion made to this Court.

6. **THIS COURT ORDERS** that in connection with the Stalking Horse Process and pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, and pursuant to section 18 of the *Act Respecting the Protection of Personal Information in the Private Sector*, R.S.Q. c P-39.1, the Applicants may disclose personal information of identifiable individuals to Potential Bidders for the assets of the Canadian Debtors and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the assets of the Canadian Debtor (each, a "Sale"). Each Potential Bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Applicants, or in the alternative destroy all such information.

7. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada and the United States or elsewhere, to give effect to this Order and to assist the Applicants, 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 Applicants 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 Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

8. **THIS COURT ORDERS** that each of the Applicants 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.



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ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

JUL 02 2009

PER / PAR: 

SCHEDULE "A"
(Bidding Procedures)

BIDDING PROCEDURES

On June ___, 2009, Indalex Holdings Finance, Inc. ("Indalex U.S.") and its affiliated U.S. debtors and debtors in possession in the above-captioned cases (collectively, the "U.S. Debtors") filed with the United States Bankruptcy Court for the District of Delaware (the "U.S. Court") the *Debtors' Motion for Entry of Order Pursuant to 11 U.S.C. §§ 105(a), 363, 365, 503, AND 507 and Federal Bankruptcy Rules 2002, 6004, 6006, AND 9014 (A) Approving Bidding Procedures for Sale of Substantially All of the U.S. Debtors' Assets* (the "U.S. Assets"); (B) *Scheduling a Hearing to Consider the Sale and Approving the Form and Manner of Notices*; (C) *Establishing Procedures for Assumption and Assignment of Certain Contracts, Including Notice of Proposed Cure Amounts*; and (D) *Authorizing Payment of a Break Fee*; and (E) *Granting Related Relief* (the "U.S. Motion").¹

On June ___, 2009, Indalex Limited ("Indalex Canada") and its Canadian based affiliates (collectively, the "Canadian Debtors" and together with the U.S. Debtors, the "Debtors") filed a motion with the Ontario Superior Court of Justice (the "Canadian Court") to approve bidding procedures for the sale of substantially all of the Canadian Debtors' assets (the "Canadian Assets") and to obtain certain ancillary relief from the Canadian Court substantially the same as the relief sought by the U.S. Debtors from the U.S. Court, pursuant to the U.S. Motion.

On July ___, 2009, the U.S. Court entered an order (the "U.S. Bidding Procedures Order") granting the relief requested in the U.S. Motion, and the Canadian Court entered an order granting the relief requested in the Canadian Motion (the "Canadian Bidding Procedures Order" and together with the U.S. Bidding Procedures Order, the "Bidding Procedures Orders"). Accordingly, the following procedures (the "Bidding Procedures") shall govern the proposed sale of substantially all the U.S. Assets and the Canadian Assets (collectively, the "Assets").

All denominations are in U.S. Dollars.

Assets for Sale

Debtors are offering to sell in one or more transactions the Assets. The Assets for sale do not include the Excluded Assets.

Bidding Deadline

All offers, solicitations, or proposals (each, a "Bid") must be submitted in writing so that they are actually **received** no later than 10:00 a.m. (Eastern time) on **July 14, 2009** (the "Bidding Deadline"). Prior to the Bidding Deadline, a Qualified Bidder (as defined below) that wants to make a Bid shall deliver written copies of its Bid to: (a) the Debtors, 75 Tri-State International, Suite 450, Lincolnshire, IL 60069, Attn: Timothy R.J. Stubbs, Chief Executive Officer and President, tim_stubbs@indalex.com; (b) counsel to the U.S. Debtors, Young Conaway Stargatt & Taylor, LLP, The Brandywine Building, 1000 West Street, 17th Floor, Wilmington, DE 19801, Attn: Michael R. Nestor, mnestor@ycst.com; (c) counsel to the

¹ All capitalized terms not herein defined shall have the meaning ascribed to them in the U.S. Bidding Procedures Order, the Canada Bidding Procedures Order or the APA

Canadian Debtors, Blake, Cassels & Graydon LLP, 199 Bay Street, Suite 2800, Toronto, Ontario, M5L 1A9, Attn.: Linc Rogers, linc.rogers@blakes.com; (d) the court-appointed monitor of the Canadian Debtors, FTI Consulting Canada ULC (the “Canadian Monitor”), TD Canada Trust Tower, 161 Bay Street, 27th Floor, Toronto, Ontario M5J 2S1, Attn.: Nigel Meakin, nigel.meakin@fticonsulting.com, and Toni Vanderlaan, toni.vanderlaan@fticonsulting.com; (e) counsel to the Canadian Monitor, Stikeman Elliott LLP, 5300 Commerce Court West, 199 Bay Street, Toronto, Ontario, M5L 1B9, Attn.: Ashley Taylor, ataylor@stikeman.com (f) investment bankers for the Debtors, Jefferies & Co. Inc., 520 Madison Avenue, New York, NY 10022, Attn: Fred Fazio, ffazio@jefferies.com; (g) counsel to the Stalking Horse Bidder, Buchanan Ingersoll & Rooney, PC, 20th Floor, One Oxford Centre, Pittsburgh, PA 15219, Attn: Craig S. Heryford, Esq., craig.heryford@bipc.com; (h) counsel to JPMorgan Chase Bank, N.A., (the “DIP Agent”) Cravath, Swaine & Moore LLP, 825 Eighth Avenue, New York, NY 10019, Attn: Robert Trust, rtrust@cravath.com; (i) counsel to the Official Committee of Unsecured Creditors, McGuireWoods LLP, 625 Liberty Avenue, 23rd Floor, Pittsburgh PA 15222-3142, Attn: Michael J. Roeschenthaler, Esq., mroeschenthaler@mcguirewoods.com, (j) financial advisors to the Official Committee of Unsecured Creditors, Huron Consulting Group, 1120 Avenue of the Americas, 8th Floor, New York, NY 10036-6700, Attn: Richard Caruso and (k) counsel to the Indenture Trustee, Faegre & Benson LLP, 90 South Seventh Street, Suite 2200, Minneapolis, MN 55402, Attn: Michael B. Fisco, Esq. (collectively, the “Notice Parties”), by the Bid Deadline. A Bid received after the Bidding Deadline shall not constitute a Qualified Bid (as defined below). A Bid shall be delivered to all Notice Parties at the same time. Interested bidders requesting information about the qualification process, including a form asset purchase agreement, and information in connection with their due diligence, should contact Fred Fazio, Vice President, Jefferies & Co., Inc., 520 Madison Avenue, New York, NY 10022, (212) 284-4662.

Participant Requirements

To participate in the process detailed by the Bidding Procedures and to otherwise be considered for any purpose hereunder, each Bid and each bidder submitting a Bid (a “Potential Bidder”) must be determined by the Debtors to have satisfactorily provided the Debtors with each of the following on or before the Bidding Deadline (the “Participant Requirements”):

- a. Identification of Potential Bidder. Identification of the Potential Bidder and any Principals (defined below), and the representatives thereof who are authorized to appear and act on their behalf for all purposes regarding the contemplated transaction;
- b. Non-Binding Expression of Interest. An executed non-binding indication of interest satisfactory to the Debtors that must reasonably identify the contemplated transaction, including the assets proposed to be acquired, the proposed purchase price, contingencies, and conditions precedent to closing;
- c. Corporate Authority. Written evidence of the Potential Bidder’s chief executive officer or other appropriate senior executive’s approval of the

contemplated transaction; provided, however, that, if the Potential Bidder is an entity specially formed for the purpose of effectuating the contemplated transaction (an "Acquisition Entity"), then the Potential Bidder must furnish written evidence reasonably acceptable to the Debtors of the approval of the contemplated transaction by the equity holder(s) of such Potential Bidder (the "Principals");

- d. Confidentiality Agreement. An executed confidentiality agreement (the "Confidentiality Agreement") in form and substance acceptable to the Debtors and their respective counsel, and in any event a confidentiality agreement on substantially the same terms as the confidentiality agreement executed by the Stalking Horse Bidder.
- e. Proof of Financial Ability to Perform. Written evidence upon which the Debtors may reasonably conclude that the Potential Bidder has the necessary financial ability to close the contemplated transaction and provide adequate assurance of future performance of all obligations to be assumed in such contemplated transaction. Such information should include, among other things, the following:
 - (i) the Potential Bidder's or, in the case of an Acquisition Entity, the Principals', current financial statements (audited if they exist);
 - (ii) contact names and numbers for verification of financing sources;
 - (iii) evidence of the Potential Bidder's or Principals' internal resources and proof of any debt or equity funding commitments that are needed to close the contemplated transaction;
 - (iv) any such other form of financial disclosure or credit-quality support information or enhancement reasonably acceptable to the Debtors demonstrating that such Potential Bidder has the ability to close the contemplated transaction; provided, however, that the Debtors shall determine, in their reasonable discretion, in consultation with their advisors (and in consultation with the Canadian Monitor), whether the written evidence of such financial wherewithal is reasonably acceptable, and shall not unreasonably withhold acceptance of a Potential Bidder's financial qualifications.

Designation as Qualified Bidder

A "Qualified Bidder" is a Potential Bidder (or combination of Potential Bidders whose Bids for the assets of the Debtors do not overlap and who agree to have their Bids combined for purposes of the determination of whether such Potential Bidders together constitute a Qualified Bidder, and who shall also be referred to herein as a single Qualified Bidder) that delivers the documents described in paragraphs (a) through (e) above, and that the Debtors in their discretion and with assistance from their advisors and the Monitor determines is reasonably

likely to submit a bona fide offer that would result in greater cash value being received for the benefit of the Debtors' creditors than under the APA (defined below) and to be able to consummate a sale if selected as a Successful Bidder (defined below).

Upon the receipt from a Potential Bidder of the information required under paragraphs (a) through (e) above, as soon as is practicable and after consultation with counsel to the Committee, the Monitor and counsel to the DIP Agent, the Debtors shall determine and notify the Potential Bidder with respect to whether such Potential Bidder is a Qualified Bidder.

The Stalking Horse Bidder is a Qualified Bidder.

Access to Due Diligence Materials

Only Potential Bidders that execute the Confidentiality Agreement are eligible to receive due-diligence access or additional non-public information. After consultation with counsel to the Committee, the Monitor and counsel to the DIP Agent, if the Debtors determine that a Potential Bidder who has satisfied the Participant Requirements does not constitute a Qualified Bidder, then such Potential Bidder's right to receive due-diligence access or additional non-public information shall terminate. The Debtors will designate an employee or other representative to coordinate all reasonable requests for additional information and due-diligence access from such Qualified Bidders. The Debtors shall not be obligated to furnish any due diligence information after the Bidding Deadline. The Debtors are not responsible for, and will bear no liability with respect to, any information obtained by Qualified Bidders in connection with the sale of the Assets.

Due Diligence From Bidders

Each Potential Bidder and Qualified Bidder (collectively, a "Bidder") shall comply with all reasonable requests for additional information and due-diligence access by the Debtors or their advisors regarding such Bidder and its contemplated transaction. Failure by a Potential Bidder to comply with requests for additional information and due-diligence access will be a basis for the Debtors to determine that the Potential Bidder is not a Qualified Bidder. Failure by a Qualified Bidder to comply with requests for additional information and due-diligence access will be a basis for the Debtors to determine that a Bid made by a Qualified Bidder is not a Qualified Bid.

Bidding Process

The Debtors and their advisors, in consultation with the Committee, the Monitor and counsel to the DIP Agent, shall: (a) determine whether a Potential Bidder is a Qualified Bidder; (b) coordinate the efforts of Bidders in conducting their due-diligence investigations, as permitted by the provisions herein; (c) receive offers from Qualified Bidders; and (d) negotiate any offers made to purchase the Assets. Subject to the Bidding Procedures Orders, the Debtors shall have the right to adopt such other rules for the Bidding Procedures (including rules that may depart from those set forth herein), that, in their sole discretion, will better promote the goals of the Bidding Procedures.

Bid Requirements

To participate in the Auction (as defined below), each Bid and Qualified Bidder submitting such a Bid must be determined by the Debtors to satisfy each of the following conditions:

- a. Written Submission of APA and Commitment to Close. Qualified Bidders must submit by the Bidding Deadline a blackline of the asset purchase agreement (the “APA”) by and among the Debtors and the Stalking Horse Bidder reflecting their proposed changes, and a written commitment that they intend to close on the terms and conditions set forth therein.
- b. Bid Allotment. Each Bid shall clearly identify which portion of the aggregate purchase price is for the U.S. Assets and which portion of the purchase price is for the Canadian Assets so that the Debtors can accurately compare such Bid to other bids for the Assets. A Bid cannot allocate a lesser amount of the purchase price to the U.S. Assets than has been allocated thereto by the Stalking Horse Bidder. A Bid cannot allocate a lesser amount of the purchase price to the Canadian Assets than has been allocated thereto by the Stalking Horse Bidder. A Bid that does not comply with the foregoing shall not, under any circumstance, constitute a Qualified Bid.
- c. Irrevocable. A Bid must be irrevocable until the sooner of (i) twenty-one (21) days after Orders from both the Canadian Court and U.S. Court are entered approving the sale of the Assets; and (ii) two (2) business days after the Assets have been sold pursuant to the Closing of the sale or sales approved by the U.S. Court and Canadian Court in a final, non-appealable order (the “Termination Date”);
- d. Contingencies: A Bid may not be conditioned on obtaining financing or any internal approval or on the outcome or review of due diligence. Any other contingencies associated with a Bid may not be more burdensome than those set forth in the APA;
- e. Financing Sources: A Bid must contain written evidence of a commitment for financing or other evidence of the ability to consummate the sale satisfactory to the Debtors with appropriate contact information for such financing sources;
- f. No Fees payable to Qualified Bidder: A Bid may not request or entitle the Qualified Bidder to any break-up fee, expense reimbursement or similar type of payment. Further, by submitting a Bid, a Qualified Bidder shall be deemed to waive its right to pursue a substantial contribution claim under section 503 of the Bankruptcy Code or in any way related to the submission of its Bid or the Bidding Procedures;

- g. Good-Faith Deposit. Each Bid must be accompanied by a deposit (the "Good Faith Deposit") in the form of certified checks or cash payable to the order of the Indalex U.S. and Indalex Canada in the aggregate amount of not less than \$10,000,000, to be prorated as follows:
- (i) in respect of the U.S. Assets, a deposit in the amount of \$7,250,000 shall be paid to an escrow agent reasonably satisfactory to the U.S. Debtors, to be held by such escrow agent in accordance with these Bidding Procedures; and
 - (ii) in respect of the Canadian Assets, a deposit in the amount of \$2,750,000 shall be paid to the Monitor, to be held by the Monitor in accordance with these Bidding Procedures.
- h. Minimum Overbid. With respect to consideration, a Bid must satisfy two minimum thresholds:
- (i) the aggregate consideration must be equal to or greater than the aggregate unadjusted Purchase Price payable to the Debtors under the APA of \$151,183,000,² plus the amount of the Break Fee of \$5,300,000 plus \$250,000 for a total minimum consideration of **\$156,733,000** (the "Minimum Overbid"); and
 - (ii) the cash component of the Minimum Overbid for:
 - (A) the U.S. Assets must be equal to or greater than the U.S. Cash Purchase Price of \$90,111,000 plus the US Debtors' *pro rata* share of the Break Fee payable under the APA being \$4,016,195 plus the U.S. Debtors *pro rata* entitlement (based on the unadjusted Purchase Price allocation provided for in the APA) of the \$250,000 payable pursuant to subparagraph (i) above in the amount \$190,000, providing for a total minimum cash amount payable to the U.S. Debtors of **\$94,317,195**; and
 - (B) the Canadian Assets must be equal to or greater than the Canadian Cash Purchase Price of \$31,700,000 plus the Canadian Debtors *pro rata* share of the Break Fee payable under the APA being \$1,283,805 plus the Canadian Debtors *pro rata* entitlement (based on unadjusted Purchase Price Allocation provided for in the APA) of the \$250,000 pursuant to subparagraph (i) above in the amount of \$60,000, being a total minimum cash amount payable to the Canadian Debtors of **\$33,043,805**.

² Which number is comprised of the U.S. Cash Purchase Price of \$90,111,000 plus the U.S. Base Assumed Liabilities Amount of \$24,436,000, and the Canadian Cash Purchase Price of \$31,700,000 plus the Canadian US Base Assumed Liabilities Amount of \$4,936,000

Auction

Only if a Qualified Bid (other than the Stalking Horse Bidder) is received by the Bidding Deadline shall the Debtors conduct an auction (the "Auction") to determine the highest and/or best bid with respect to the Assets. The Auction shall commence on **July 16, 2009**, at 10:00 a.m. (Eastern Time); at the offices of Young Conaway Stargatt & Taylor, The Brandywine Building, 1000 West Street, 17th Floor, Wilmington, DE 19801.

If no such Qualified Bid is received by the Bidding Deadline, then the Auction will not be held. Accordingly, the Stalking Horse Bidder will be the Successful Bidder. The APA will be the Successful Bid, and, at the Sale Hearings (as defined below) on **July 20, 2009** the Debtors will seek approval of and authority to consummate the proposed sale contemplated by the APA.

The Auction shall be conducted according to the following procedures:

a. Participation At The Auction

Only a Qualified Bidder that has submitted a Qualified Bid is eligible to participate at the Auction. Only the authorized representatives of each of the Qualified Bidders, the Debtors, counsel to the Committee, the Monitor and counsel to the DIP Agent shall be permitted to attend. During the Auction, bidding shall begin initially with the highest Qualified Bid (the "Opening Bid") and subsequently continue in minimum increments of at least \$250,000 (or such other amount the Debtors determine to facilitate the Auction), and shall be deemed to be allocated between the U.S. Assets and the Canadian Assets in the same proportion as was allocated in the Opening Bid.

b. Debtors Shall Conduct The Auction

The Debtors and their professionals shall direct and preside over the Auction. At the start of the Auction, the Debtors shall describe the terms of the Opening Bid. The determination of which Qualified Bid constitutes the Opening Bid shall take into account any factors the Debtors reasonably deem relevant to the value of the Qualified Bid to the estates, including, among other things, the following: (i) the amount and nature of the consideration; (ii) the proposed assumption of any liabilities, if any; (iii) the ability of the Qualified Bidder to close the proposed transaction; (iv) the proposed Closing Date and the likelihood, extent and impact of any potential delays in Closing; (v) any purchase-price adjustments; (vi) the impact of the contemplated transaction on any actual or potential litigation; (vii) the net economic effect of any changes from the APA, if any, contemplated by the contemplated transaction documents (the "Contemplated Transaction Documents"), (viii) the net after-tax consideration to be received by the Debtors' estates; and (ix) such other considerations the Debtors deem relevant in their sole discretion (collectively, the "Bid Assessment Criteria"). All Bids made thereafter shall be Overbids (as defined below), and shall be made and received on an open basis, and all material terms of each Bid shall be fully disclosed to all other Qualified Bidders. The Debtors shall maintain a transcript of all Qualified Bids made and announced at the Auction, including the Baseline Bid, all Overbids and the Successful Bid.

c. Terms of Overbids

An “Overbid” is any Bid made at the Auction subsequent to the Debtors’ announcement of the Opening Bid. To submit an Overbid for purposes of this Auction, a Qualified Bidder must comply with the following conditions:

(i) Minimum Overbid Increment

Any Overbid after the Opening Bid shall be made in increments of at least \$250,000 (or such other amount the Debtors determine to facilitate the Auction). Additional consideration in excess of the amount set forth in the Baseline Bid must be comprised only of cash consideration. Each Overbid shall be deemed to be allocated between the U.S. Assets and the Canadian Assets in accordance with the allocation of the cash consideration of the Opening Bid.

(ii) Remaining Terms are the same as for Qualified Bids

Except as modified herein, an Overbid must comply with the conditions for a Qualified Bid set forth above, provided, however, that the Bidding Deadline shall not apply. Any Overbid made by a Qualified Bidder must remain open and binding on the Qualified Bidder until and unless (a) the Debtors accept a higher Qualified Bid as an Overbid and (b) such Overbid is not selected as the Back-up Bid (as defined below).

To the extent not previously provided (which shall be determined by the Debtors), a Qualified Bidder submitting an Overbid must submit, as part of its Overbid, written evidence (in the form of financial disclosure or credit-quality support information or enhancement reasonably acceptable to the Debtors) demonstrating such Qualified Bidder’s ability to close the transaction proposed by such Overbid.

(iii) Announcing Overbids

The Debtors shall announce at the Auction the material terms of each Overbid, the basis for calculating the total consideration offered in each such Overbid, and the resulting benefit to the Debtors’ estates based on, among other things, the Bid Assessment Criteria.

(iv) Consideration of Overbids

The Debtors reserve the right, in their reasonable business judgment, to make one or more adjournments in the Auction to, among other things: (a) facilitate discussions between the Debtors and individual Qualified Bidders; (b) allow individual Qualified Bidders to consider how they wish to proceed; (c) consider and determine the current highest and best Overbid at any given time during the Auction; and (d) give Qualified Bidders the opportunity to provide the Debtors with such additional evidence as the Debtors, in their reasonable business judgment, may require that the Qualified Bidder (other than Stalking Horse Bidder) has sufficient internal resources, or has received sufficient non-contingent debt and/or equity funding commitments, to consummate the proposed transaction at the prevailing Overbid amount.

d. Additional Procedures

In their reasonable discretion, the Debtors may adopt rules for the Auction at or prior to the Auction that will better promote the goals of the Auction and that are not inconsistent with any of the provisions of the Bidding Procedures Orders. All such rules will provide that all Bids shall be made and received in one room, on an open basis, and all other Qualified Bidders shall be entitled to be present for all bidding with the understanding that the true identity of each Qualified Bidder – i.e., Principals submitting the Bid – shall be fully disclosed to all other Qualified Bidders and that all material terms of each Qualified Bid will be fully disclosed to all other Qualified Bidders throughout the entire Auction.

e. Closing the Auction

Upon conclusion of the bidding, the Auction shall be closed, and the Debtors shall (i) immediately review the final Overbid of each Qualified Bidder on the basis of financial and contractual terms and the factors relevant to the sale process, including those factors affecting the speed and certainty of consummating the proposed sale, and (ii) identify the highest, best, and/or otherwise financially superior offer for the Assets (the “Successful Bid”) and the entity submitting such Successful Bid, the “Successful Bidder”), which highest, best and/or otherwise financially superior offer will provide the greatest amount of net cash value to the Debtors, and the next highest or otherwise best offer after the Successful Bid (the “Back-up Bid”), and advise the Qualified Bidder of such determination. If the Stalking Horse Bidder’s final Bid is deemed to be highest and best at the conclusion of the Auction, the Stalking Horse Bidder will be the Successful Bidder, and such Bid, the Successful Bid.

f. Consent to Jurisdiction as Condition to Bid.

All Qualified Bidders at the Auction shall be deemed to have consented to the joint jurisdiction of the U.S. Court and Canadian Court and waived any right to a jury trial in connection with any disputes relating to the Auction, and the construction and enforcement of the Bidder’s Contemplated Transaction Documents, as applicable.

g. Break-Fee

In the event that an Alternate Transaction is consummated the APA shall be terminated pursuant to Section 11.1(b)(ii) of the APA, and the Break Fee, in the amount of \$5,300,000, shall be payable from the proceeds received upon consummation of such Alternate Transaction, as follows: (i) each US Seller shall pay to US Purchaser its pro-rata share of the Break Fee payable by US Sellers based upon US Purchaser’s pro rata share of Purchase Price payable under the APA, (ii) each Canadian Seller shall pay to Canadian Purchaser its pro-rata share of the Break Fee payable by Canadian Sellers based upon Canadian Purchaser’s pro-rata share of Purchase Price payable under the APA, (iii) any obligation to pay the Break Fee under the APA shall be absolute and unconditional and shall not be subject to any defense, claim, counterclaim, offset, recoupment or reduction of any kind whatsoever; and (iv) Section 11.3 of the APA and the rights and obligations created thereunder shall survive termination of the APA.

Acceptance of Successful Bid

The Debtors shall sell the Assets to the Successful Bidder upon the approval of the Successful Bid by the U.S. Court and the Canadian Court. The Debtors' presentation of a particular Qualified Bid to (i) the U.S. Court (by the U.S. Debtors) and (ii) the Canadian Court (by the Canadian Debtors) for approval does not constitute the Debtors' acceptance of the Bid. The Debtors will be deemed to have accepted a Bid only when the Bid has been approved by the both the U.S. Court and the Canadian Court. All interested parties reserve their right to object to the Debtors' selection of the Successful Bidder (including the assignment of any of such objector's Assigned Contracts thereto, provided, however, that any objection to such assignment on the basis of the Cure Amounts must be made and/or reserved as set forth in the order approving these Bidding Procedures).

"As Is, Where Is"

The sale of the Assets shall be on an "as is, where is" basis and without representations or warranties of any kind, nature, or description by the Debtors, their agents or estates except to the extent set forth in the APA or the purchase agreement of another Successful Bidder. The Stalking Horse Bidder and each Qualified Bidder shall be deemed to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Assets prior to making its offer, that it has relied solely on its own independent review, investigation, and/or inspection of any documents and/or the Assets in making its Bid, and that it did not rely on any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Assets, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in these Bidding Procedures or, (a) as to the Stalking Horse Bidder, the terms of the sale of the Assets shall be set forth in the APA, or (b) as to another Successful Bidder, the terms of the sale of the Assets shall be set forth in the applicable purchase agreement.

Free Of Any And All Encumbrances

Except as otherwise provided in the APA or another Successful Bidder's purchase agreement, all of the Debtors' right, title, and interest in and to the Assets subject thereto shall be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options, and interests thereon and there against (collectively, the "Encumbrances") in accordance with 11 U.S.C. § 363 and a vesting order of the Canadian Court, with such Encumbrances to attach to the net proceeds of the sale of the Assets.

Sale Hearing

Hearings to approve the sale of the Assets to the Successful Bidder shall be conducted by (i) the U.S. Court on **July 20, 2009**, located at 824 North Market Street, 6th Floor, Courtroom No. 2 Wilmington, Delaware (the "U.S. Sale Hearing"), and (ii) by the Canadian Court on **July 20, 2009**, located at 330 University Avenue 8th floor, Toronto, Ontario (the "Canadian Sale Hearing" and together with the U.S. Hearing, the "Sale Hearings").³ A joint

³ Or such other location as the U.S. Court or Canadian Court may deem appropriate.

hearing of the Sale Hearings may be held in accordance with the Debtors' cross-border insolvency protocol, at the option of the Debtors. Following the approval of the sale of the Assets to the Successful Bidder at the Sale Hearings, if such Successful Bidder fails to consummate an approved sale within ten (10) days after entry of Orders by both the U.S. Court and the Canadian Court approving the sale of the Assets (except where the sole cause of any delay in Closing is as a result of either (A) notification requirements under the HSR Act and the Competition Act (Canada) or (B) default by the Debtors), the Debtors shall be authorized, but not required, to deem the Back-up Bid, as disclosed at the Sale Hearings, the Successful Bid and the Debtors shall be authorized, but not required, to consummate the sale with the Qualified Bidder submitting such Back-up Bid without further notice or orders of the U.S. Court or Canadian Court.

Return of Good Faith Deposit:

Good Faith Deposits of the Successful Bidder shall be applied to the purchase price of such transaction at Closing. Good Faith Deposits of all other Qualified Bidders shall be held in an interest-bearing escrow account until two (2) days after Closing of the transactions contemplated by the Successful Bid, and thereafter returned to the respective Qualified Bidders. If a Successful Bidder fails to consummate an approved sale because of a breach or failure to perform on the part of such Successful Bidder, the Debtors shall be entitled to retain the Good Faith Deposit as part of their damages resulting from the breach or failure to perform by the Successful Bidder.

Modifications and Reservations

The Bidding Procedures may be modified only upon the express written consent of the Debtors and the Stalking Horse Bidder, or by order of the U.S. Court and Canadian Court.

The Debtors may (a) determine which Qualified Bid, if any, is the highest, best, and/or otherwise financially superior offer; and (b) reject at any time before entry of orders of the U.S. Court and Canadian Court approving a Qualified Bid, any Bid that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bankruptcy Code, the Bidding Procedures, or the terms and conditions of sale, or (iii) contrary to the best interests of the Debtors, their estates and creditors thereof.

At or before the Sale Hearings, the Debtors may impose such other terms and conditions as the Debtors may determine to be in the best interests of their estates and creditors and other parties in interest thereof that are not inconsistent with any of the procedures of the Bidding Procedures Orders or these Bidding Procedures.

Reservation of Rights

Subject to the Bidding Procedures Orders, the Debtors reserve the right as they may determine to be in the best interests of their estates to: (i) determine which Potential Bidders are Qualified Bidders; (ii) determine which Bids are Qualified Bids; (iii) determine which Qualified Bid is the highest and best proposal and which is the next highest and best proposal, (iv) reject any Bid that is (a) inadequate or insufficient, (b) not in conformity with the requirements of the Bidding Procedures Orders or the requirements of the U.S. Bankruptcy Code

or the *Companies' Creditors Arrangement Act* (Canada) or any other orders entered by the U.S. Court or Canadian Court, or (c) contrary to the best interests of the Debtors and their estates or stakeholders, as applicable; (v) waive terms and conditions set forth herein with respect to any or all Potential Bidders, (vi) impose additional terms and conditions with respect to any or all Potential Bidders, (vii) adjourn the Auction and/or Sale Hearing in open court without further notice; (ix) with the consent of the Stalking Horse Bidder, remove a portion of the Assets from the Auction. Without limiting the generality of the foregoing, the Debtors may determine to distribute or not distribute copies of other Qualified Bids to other Qualified Bidders prior to or during the Auction.

