

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

B E T W E E N :

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
1985, R.S.C. 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.

Applicants

MOTION RECORD

(Motion by retirees re: Deemed Trust, returnable August 28, 2009)

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Degen, Eugene D'Iorio, Richard Smith, Robert
Leckie, Neil Fraser and Fred Granville, members
of the Retirement Plan for Executive Employees
of Indalex Canada and Associated Companies

TO: ATTACHED SERVICE LIST

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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.

the Applicants

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INDEX

I N D E X

TAB	DOCUMENT	PAGES
1	Notice of Motion dated August 5, 2009	1 - 4
2	Affidavit of Keith Carruthers, sworn August __, 2009	5 – 9
A	Exhibit A – Letter from Ashley Taylor of Stikeman Elliott to Andrew Hatnay of Koskie Minsky LLP dated July 13, 2009	10 - 13
B	Exhibit B – Endorsement of Justice Morawetz dated July 24, 2009	14 - 18
C	Exhibit C – Retirement Plan for Executive Employees of Caradon Limited and Associated Companies (as amended and Restated at January 1, 1995)	19 - 120
D	Exhibit D - Actuarial Valuation Report of the Executive Plan as of January 1, 2008 prepared by Mercer	121 – 163
E	Exhibit E - Letter from Morneau Sobeco to Andrew Hatnay of Koskie Minsky LLP dated July 16, 2009	164 – 168
F	Exhibit F – Letter from Andrew Hatnay of Koskie Minsky LLP to counsel for Indalex and the Monitor dated June 26, 2009	169 – 171
3	Affidavit of Max Degen, sworn August __, 2009	172 – 178
4	Affidavit of Keith Carruthers, sworn June 23, 2009	179 – 195
A	Exhibit A – Letters to SERP Group members from Indalex Inc., dated April 9, 2009	196 – 202
B	Exhibit B – Supplemental Retirement Plan For Executive Employees of Indalex Limited and Associated Companies, effective January 1, 2000	203 – 238
C	Exhibit C – Retirement Package to Keith Carruthers from William M. Mercer, dated October 6, 1999	239 - 247
D	Exhibit D – Affidavit of Timothy R.J. Stubbs, sworn April 3, 2009	248 - 272

TAB	DOCUMENT	PAGES
E	Exhibit E – Retirement Plan for the Executive Employees of Indalex Limited and Associated Companies, dated January 1, 2008	273 - 315
F	Exhibit F – Letter to counsel from Koskie Minsky LLP, dated June 17, 2009	316 -318
G	Exhibit G – Memorandum from Tim Stubbs, dated June 5, 2009	319 - 320
H	Exhibit H – Letter to Keith Carruthers from P.G. Shelley, dated January 13, 1993.	321 - 324
I	Exhibit I – Earnings Statement of Keith Carruthers, dated January 13, 2009	325 - 326
J	Exhibit J – Earnings Statement of Leon Kozierok, dated March 13, 2009	327 - 328
K	Exhibit K – Personal Pension Statement of Leon Kozierok, dated 2000	329 - 330
L	Exhibit L – Earnings Statement of Max Degen, dated March 13, 2009	331 - 332
M	Exhibit M – Letter to Canadian Imperial Bank of Commerce, from Dennis A. Bamber, dated April 25, 1994	333 - 334
N	Exhibit N – Earnings Statement of Bertram McBride, dated February 13, 2009	335 - 336
O	Exhibit O – Statement of Election and Benefits of Bertram McBride, dated November 3, 2008	337 - 341
P	Exhibit P – Earnings Statement of Neil Fraser, dated February 13, 2009	342 - 343
Q	Exhibit Q – Retirement Package to Neil Fraser from William M. Mercer, dated October 25, 1999	344 - 352
R	Exhibit R – Letter to Mr. D. Proctor from Neil Fraser, dated November 1, 1999	353 - 354
S	Exhibit S – Earnings Statement of Eugene D'Iorio, dated January 13, 2009	355 - 356

TAB	DOCUMENT	PAGES
T	Exhibit T – Letter to Richard Smith from Indalex USA Pension Plan Administration, dated August 14, 2008	357 - 358
U	Exhibit U – Letter to Richard Smith from Indalex Inc., dated October 23, 2000	359 - 366
V	Exhibit V – Email Correspondence between Robert Leckie and Dale Tabinowski	367 - 369
5	Affidavit of Andrea McKinnon, sworn July 17, 2009	370 - 374
A	Exhibit A - Letter from Koskie Minsky LLP to counsel to Indalex and counsel to the Monitor dated June 26, 2009.	375 - 377
B	Exhibit B – <i>Pension Benefits Act</i> , R.S.O. 1990, c.P.8, sections 57(5) and 75	378 - 380
C	Exhibit C - Letter from Koskie Minsky LLP to counsel to Indalex and counsel to the Monitor dated July 10, 2009	381- 385
D	Exhibit D – Letter from Stikeman Elliott to Koskie Minsky LLP dated July 13, 2009	386 - 389
E	Exhibit E - Email from Linc Rogers of Blakes, Cassels & Graydon LLP to Andrew Hatnay of Koskie Minsky LLP dated July 14, 2009	390 - 392
F	Exhibit F - Actuarial Report for the Executive Plan as at January 1, 2008 prepared Mercer Canada Limited	393 - 434
G	Exhibit G - Letter from Morneau Sobeco to Koskie Minsky LLP dated July 16, 2009	435 - 439

TAB '1'

**ONTARIO
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B E T W E E N :

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, 1985
R.S.C. 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.

Applicants

**NOTICE OF MOTION
(Motion by retirees re: Deemed Trust,
returnable August 28, 2009)**

Keith Carruthers, Leon Kozierok, Richard Benson, John Faveri, Ken Waldron, John (Jack) W. Rooney, Bertram McBride, Max Degen, Eugene D'Iorio, Richard Smith, Robert Leckie, Neil Fraser and Fred Granville (the "Pensioners") who are members of The Retirement Plan for Executive Employees of Indalex Canada and Associated Companies, Canada Revenue Agency Registration number 0455626 (the "Executive Plan") will make a motion to a judge of the Commercial List on August 28, 2009 at 10:00 a.m., or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

1. A Declaration that the amount of \$3.2 million representing the wind up liability owing to the Executive Plan by the Applicants that is currently held in reserve by the Monitor is subject to a deemed trust for the benefit of the beneficiaries of the Executive Plan under section 57(4) of the Ontario *Pension Benefits Act* R.S.O. c. P. 8 ("PBA") to be paid into

- the fund of the Executive Plan in accordance with the PBA, and that such amounts are not distributable to other creditors of the Applicants and that such declarations survive any bankruptcy of the Applicants;
2. An Order, if necessary, directing the Applicants to proceed with the wind up process of the Executive Plan in accordance with section 68 of the PBA;
 3. In the alternative, an Order directing the Monitor to pay the \$3.2 million it is holding in reserve to the fund of the Executive Plan;
 4. An Order, in the alternative, directing the Ontario Superintendent of Financial Services to appoint an administrator over the Executive Plan to proceed with the wind up process under section 71 of the PBA;
 5. An Order if necessary, lifting the stay of proceedings to allow any of the foregoing Orders to be made;
 6. Such further and other relief as counsel may request and this Honourable Court permit.

THE GROUNDS FOR THE MOTION ARE:

1. The Pensioners are retirees of the Applicants or their predecessor companies who through their employment service became contractually entitled to pension benefits for their lifetimes from the Applicants from the Executive Plan, a registered pension plan;
2. On April 3, 2009, the Applicants were granted protection from their creditors under the *Companies' Creditors Arrangement Act* R.S.C. 1985, c.C-36 as amended (the "CCAA"). On April 8, 2009, the Initial Order was amended and restated. The Amended and Restated Initial Order was amended and restated again on May 12, 2009 (the "CCAA Order");
3. The Executive Plan is underfunded. There is approximately \$3.2 million wind up deficiency owing to the Executive Plan.

4. The Monitor has confirmed that the Executive Plan will be wound up.
5. Given that the Applicants have liquidated all of their assets and have discontinued all of their business, the wind up of the Executive Plan is inevitable.
6. The Monitor is currently holding \$3.2 million of the proceeds from the sale of the Applicants' assets in reserve pursuant to the endorsement of this Court dated July 20, 2009. There are sufficient funds being reserved by the Monitor to cover the \$3.2 million wind up liability for the Executive Plan.
7. Section 57(4) of the PBA states that amounts that an employer owes to a pension plan on its wind up are deemed to be held in trust by the employer for the beneficiaries of the pension plan.
8. Further, the terms of the Executive Plan expressly require the Applicants to fund the Executive Plan upon wind-up.
9. Unless the amounts owed under the Executive Plan are subject to a deemed trust under the PBA, the Pensioners stand to lose approximately $\frac{1}{2}$ to $\frac{2}{3}$ of their total monthly pension benefits from the Executive Plan and the Supplemental Pension Plan, which has already been terminated by the Applicants.
10. Rules 2.03, 3.02 and 37 of the *Rules of Civil Procedure*
11. Subsections 57(4), 57(5), 68, 69 and 75 and section 75 of the PBA; and
12. Such further and other grounds that counsel may advise and this Honourable Court permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. The affidavit of Keith Carruthers, to be sworn;

2. The affidavit of Max Degen, to be sworn;
2. The affidavit of Keith Carruthers, sworn June 23, 2009;
3. The affidavit of Andrea McKinnon, sworn July 17, 2009;
4. The Monitors' Reports; and
5. Such further and other material as counsel may advise and this Honourable Court permit.

August 5, 2009

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Lawyers for Keith Carruthers, Leon Kozierok, Richard Benson, John Faveri, Ken Waldron, John (Jack) W. Rooney, Bertram McBride, Max Degen, Eugene D'Torio, Richard Smith, Robert Leckie, Neil Fraser and Fred Granville, members of the Retirement Plan for Executive Employees of Indalex Canada and Associated Companies

TO: ATTACHED SERVICE LIST

TAB '2'

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
1985, R.S.C. 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.

Applicants

**AFFIDAVIT OF KEITH B. CARRUTHERS
(sworn August , 2009)**

I, KEITH B. CARRUTHERS, of the City of London, in the Province of Ontario, MAKE
OATH AND SAY:

1. I am a former executive employee of Indalex Division of Indal Limited, which is a predecessor company to Indalex Limited and/or one of its affiliated companies, (collectively, "Indalex Canada" or the "company"), who are the Applicants in these proceedings.
2. I am currently 67 years of age. I worked with the Indalex group of companies for over 27 years. I have been retired for 10 years. When I retired, I was President and CEO of Indalex Division of Caradon Limited. As a former employee and current retiree of Indalex Canada, I

have knowledge of the matters to which I hereinafter depose, except where stated to be based upon information and belief.

3. I am part of a group of pensioners of the Applicants along with Bertram McBride, Leon Kozierok, Max Degen, Eugene D'Iorio, Richard Smith, Robert Leckie, Neil Fraser, Richard Benson, John Faveri, Jack Rooney, Robert Waldron and Fred Granville and Gary Rutledge (the "Pensioners"). We are all pensioners entitled to pension benefits from the Retirement Plan for the Executive Employees of Indalex Limited and Associated Companies (the "Executive Plan").

4. I have previously sworn an affidavit in these proceedings dated June 23, 2009 setting out the situation of myself and the other pensioners of the Executive Plan in the CCAA proceedings of the Applicants and the losses of our pension benefits.

5. This affidavit is sworn in support of a motion by the Pensioners for a declaration that the \$3.2 million owing to the Executive Plan is subject to a deemed trust under section 57(5) of the Ontario *Pension Benefits Act* (the "PBA").

The Executive Plan will be wound up

6. The Monitor has stated that the Executive Plan is expected to be wound up. In a letter responding to questions from our counsel regarding the Executive Plan dated July 13, 2009, counsel to the Monitor states:

Following the completion of the asset sale, there will no longer be any active members of the Executive Plan. As discussed at the July 2, 2009 court hearing, it is unlikely that any bidder will elect to absorb obligations owing by Indalex that provides no

corresponding benefit to such bidder. *Accordingly it is expected that the Executive Plan will be fully wound up in accordance with the requirements of the Pension Benefits Act (Ontario).*

7. Attached hereto as **Exhibit A** is a copy of the letter from Ashley Taylor of Stikeman to our counsel dated July 13, 2009.

8. The sale of the Applicants' to SAPA Holdings was approved by this Court on July 20, 2009. One of the terms of the sale was that SAPA would not take on any of the Applicants' liabilities under the Executive Plan nor the Supplemental Pension Plan.

9. The Executive Plan is underfunded. There is an approximately \$3.2 million owing to the plan on its wind up. Due to its underfunding by the Applicants, I am advised by my counsel and believe that our monthly pension benefits from this plan will be reduced by approximately 30-40%. This will be a substantial loss of the Pensioners' monthly pension benefits.

10. This loss is in addition to the loss we have already incurred in respect of our supplemental pension benefits which the Applicants terminated after obtaining CCAA protection. Our motion to have those supplemental benefits reinstated was dismissed by Justice Morawetz. Attached hereto as **Exhibit B** is a copy of Justice Morawetz's endorsement dated July 24, 2009.

11. Based on our years of employment service with the Applicants, the Pensioners are entitled to receive pension benefits from the Executive Plan.

12. The Executive Plan is a registered pension plan. A copy of the plan text with amendments is attached hereto as **Exhibit C**.

13. Article 14 of the Executive Plan text states that upon the wind up of the plan (i.e., termination of the plan) the Company shall make contributions to the fund “as required by the Plan and Applicable Pension Legislation”. Article 14 states:

Article 14 – Right to Amend or Termination the Plan

...

14.3 Termination of the Plan

...

b) If the Plan is wound up, in whole or in part, the Employer will not make further contributions to the Fund in respect of the Plan or the portion of the Plan being wound up, as applicable, *except for amounts due or that have accrued up to the effective date of the wind-up and which have not been paid into the Fund, as required by the Plan and Applicable Pension Legislation.* [emphasis added]

14. I am advised by my counsel and believe that section 75 of the PBA requires an employer to pay into a pension plan that is being wound up all amounts that are owing to the pension plan.

15. As of January 1, 2008, the Executive Plan had a funding deficiency on an ongoing basis of \$2,535,100, on a solvency basis of \$1,102,800 and on a wind-up basis of \$2,996,400. Attached hereto as **Exhibit D** is a copy of the Actuarial Valuation Report of the Executive Plan as of January 1, 2008.

16. However, the January 1, 2008 actuarial report is 1 ½ years out of date. The Pensioners therefore arranged for a review of the January 1, 2008 actuarial report to be done by Morneau Sobeco, a firm of actuaries who perform pension plan wind up work.

17. Morneau Sobeco has estimated that the current wind up liability of the Executive Plan has worsened since January 1, 2008 and is now \$3.2 million. Attached hereto as **Exhibit E** is a copy of their letter from Morneau Sobeco dated July 16, 2009. The report from Morneau

Sobeco is attached as Exhibit G to the affidavit of Andrea MacKinnon sworn July 16, 2009 filed herein.

18. Attached hereto and marked as **Exhibit F** is a copy of a letter sent by our counsel, Andrew Hatnay, to counsel for Indalex and the Monitor dated June 26, 2009. This letter refers to the underfunded Executive Plan and states that the Pensioners reserve all rights to the deemed trust under section 57(4) of the PBA (as well as the plan administrator's lien and charge in section 57(5)). Section 57(4) states that amounts that an employer who owes contributions to a pension plan on its wind up is deemed to hold in trust for the beneficiaries an amount equivalent to those employer contributions.

19. There was no response or objection received to this letter.

20. I swear this Affidavit in good faith and in support of a motion that \$3.2 million of the company's funds is subject to a deemed trust or administrator's charge under the *Pension Benefits Act* due to the wind up deficiency of the Executive Plan and for no improper purpose.

SWORN BEFORE ME at the _____ of, _____ in the Province of _____, on August _____, 2009.

Commissioner for Taking Affidavits

KEITH B. CARRUTHERS

TAB 'A'

This is *Exhibit "A"* referred to in the affidavit of **KEITH B. CARRUTHERS** sworn before me, this day of August, 2009

.....

Commissioner for taking affidavits

STIKEMAN ELLIOTT

Stikeman Elliott LLP Barristers & Solicitors

5300 Commerce Court West, 199 Bay Street, Toronto, Canada M5L 1B9
Tel: (416) 869-5500 Fax: (416) 947-0866 www.stikeman.com

Direct: (416) 869-5236
E-mail: ataylor@stikeman.com

BY EMAIL

July 13, 2009
File No.: 1096791002

Mr. Andrew J. Hatnay
Koskie Minsky LLP
20 Queen Street West,
Suite 900
Toronto, Ontario
M5H 3R3

Dear Andrew:

Re: Indalex Limited, Indalex Holdings (B.C.) Ltd., 6326765 Canada Inc. and
Novar Inc. ("Indalex"); Court File No. CV-09-8122-00CL

This letter is written in response to the Questions for Monitor and Company
Re: Executive Plan and Supplementary Pension Plan you gave to counsel to Indalex
and counsel to the Monitor on July 2, 2009. We have received responses from
Indalex to each of your questions other than question 6, which was addressed to the
Monitor. The responses are set forth below following each of your questions.

- 1. What efforts were pursued with the purchaser for the purchaser to take the
Executive Plan and Supplementary Plan?

The Stalking Horse Asset Purchase Agreement was negotiated with a view to
maximizing monetary recovery for Indalex's stakeholders, minimizing closing risks
associated with the transaction and ensuring stable, continued employment for
Indalex's current workforce. The Stalking Horse Bidder maintained consistently
throughout the course of negotiations with Indalex that it was only prepared to
accept certain liabilities arising prior to the closing date relating to employees who
were being offered employment by the Stalking Horse Bidder.

The Stalking Horse Bidder expressed no interest in assuming the Retirement
Plan for the Executive Employees of Indalex Canada and Associated Companies (the
"Executive Plan") or the Supplementary Retirement Plan for Executive Employees
of Indalex Canada and Associated Companies (the "Supplementary Plan") or
otherwise paying direct consideration to any creditor of Indalex that would not have
a continuing business or employment relationship with the Stalking Horse Bidder.

TORONTO
MONTREAL
OTTAWA
CALGARY
VANCOUVER
NEW YORK
LONDON
SYDNEY

2. Did any potential purchaser express a willingness to take the Executive Plan and Supplementary Plan?

No other potential bidder expressed any willingness to assume the Executive Plan or the Supplementary Plan or assume any liabilities relating to current or former employees who would not be offered employment with the bidder.

3. What is the company's intention with respect to the Executive Plan and Supplementary Plan?

Indalex's focus has been on maintaining its post-filing obligations and securing a viable going concern solution for its business. As is evident from the court material filed to date, Indalex has not made any recommendations to the Court with respect to the wind-down of its estate following the sale of its assets and business to a Successful Bidder.

Following the completion of the asset sale, there will no longer be any active members of the Executive Plan. As discussed at the July 2, 2009 Court hearing, it is unlikely that any bidder will elect to absorb obligations owing by Indalex that provides no corresponding benefit to such bidder. Accordingly, it is expected that the Executive Plan will be fully wound up in accordance with the requirements of the *Pension Benefits Act* (Ontario). All unsecured claims, including those arising from the wind up of the Executive Plan and in connection with the Supplementary Plan, will be dealt with in accordance with applicable law.

4. What steps did the Company and Monitor take to look after the Executive Plan and Supplementary Plan?

Indalex has continued to make all required current service contributions to the Executive Plan. Contrary to Mr. Hatnay's statement in Court, Indalex made all required special payments to the Executive Plan prior to filing, and no requirement to make special payments has arisen or is currently outstanding since the commencement of these proceedings. Indalex is therefore not in default with respect to special payments to the Executive Plan. The Supplementary Plan has been dealt with in accordance with the terms of the Amended Amended and Restated Initial Order.

5. Were the purchasers informed of the existence of the Executive Plan and Supplementary Plan?

Both the Executive Plan and the Supplementary Plan were posted in the electronic data room made available for bidders in connection with their due diligence.

6. What is the recommendation of the Monitor to the Court regarding the Executive Plan and Supplementary Plan?

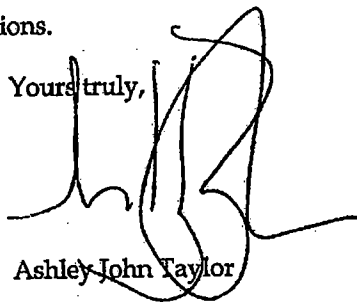
The Monitor has been informed that Indalex has made all required current service contributions and special payments with respect to the Executive Plan. The Monitor understands that a restructuring of Indalex is not feasible and that the best remaining alternative is to sell the business of Indalex as a going concern. The Monitor further understands that no bidders expressed any interest in assuming the Executive Plan or the Supplementary Plan. The only other available alternative appears to be a liquidation of Indalex. In neither scenario would the Executive Plan or the Supplementary Plan continue. Therefore, in the circumstances, it is unnecessary for the Monitor to make a recommendation with respect to the plan.

7. What is the current funded status of the Executive Plan and Supplementary Plan?

The most recently determined funded status of the Executive Plan (i.e., as at January 1, 2008) is as set out in the affidavit of Timothy Stubbs sworn April 3, 2009 (the "Stubbs Affidavit"). We understand Mr. Hatnay has a copy of the Stubbs Affidavit. The Supplementary Plan is an unfunded and unsecured arrangement.

Please call me if you have any questions.

Yours truly,



Ashley John Taylor

cc: Nigel Meakin and Toni Vanderlaan, *FTI Consulting Canada ULC*
Lesley Mercer, *Stikeman Elliott LLP*
Linc Rogers, Katherine McEachern and Jackie Moher, *Blake, Cassels & Graydon LLP*
Tushara Weerasooriya, *McMillan LLP*
Ken Kraft and John Salmas, *Heenan Blaikie LLP*

TAB 'B'

This is ***Exhibit "B"*** referred to in the affidavit of **KEITH B. CARRUTHERS** sworn before me, this day of August, 2009

.....

Commissioner for taking affidavits

COURT FILE NO.: CV-09-8122-00CL
DATE: 20090724

**SUPERIOR COURT OF JUSTICE – ONTARIO
(COMMERCIAL LIST)**

**RE: IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C., 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 CANADIAN INC. AND NOVAR INC.**

Applicants

BEFORE: MORAWETZ J.

COUNSEL: Linc Rogers, Katherine McEachern and Jackie Mohr, for the Applicants

**Ashley Taylor and Lesley Mercer, for FTI Consulting Canada ULC,
Monitor**

Paul Macdonald and Jeff Levine, for JPMorgan (DIP Lender)

Kenneth D. Kraft, for SAPA Holding AB

**Andrew Hatnay and Demetrios Yiokaris and Andrew Mckinnon, for
Keith Carruthers and SERP Retirees**

B. Empey, for Sun Indalex Finance LLC

John D. Leslie, for the U.S. Unsecured Creditors' Committee

G. Finlayson, for U.S. Bank as Trustee for the Noteholders

**HEARD &
DECIDED: JULY 2, 2009**

ENDORSEMENT

Page: 2

[1] I heard argument in this matter on July 2, 2009 at the conclusion of which I dismissed the motion with reasons to follow. These are those reasons.

[2] Members of the Indalex Supplemental Executive Retirement Plan or "SERP", (referred to collectively as the "SERP Group") brought this motion for an order requiring the Indalex Applicants to reinstate payment of supplemental pension benefits retroactive to April 2009.

[3] The motion is opposed by the Indalex Applicants, the Noteholders and by the DIP Lender. Counsel to the DIP Lender submits that if these payments are made, they would constitute an event of default under the DIP Agreement. Such payments would need the consent or waiver from the DIP Lender which counsel submits, is not forthcoming.

[4] The SERP Group have a contractual entitlement to pension benefits under the Supplemental Retirement Plan for executive employees of Indalex Limited and associated companies (the "Supplemental Plan").

[5] The Supplemental Plan is an unfunded and non-registered supplemental pension plan. Benefits under the Supplemental Plan are paid out of the general revenues of the Indalex Applicants.

[6] Immediately after filing for CCAA protection on April 3, 2009, the Indalex Applicants informed the SERP Group that their supplemental pension benefits were being stopped.

[7] The situation confronting members of the SERP Group is very similar to that faced by certain former employees of Nortel Networks ("Former Nortel Employees") who recently brought a motion requesting an order requiring the Applicants in Nortel's CCAA proceedings (the "Nortel Applicants") to make payments which the Nortel Applicants were contractually obligated to pay to Former Nortel Employees, relating to the Transitional Retirement Allowance and any pension benefit payments Former Nortel Employees were entitled to receive in excess of the pension plan. The motion was dismissed. (See *Nortel Networks Corp., Re 2009 CarswellOnt. 3583*).

[8] The reasons provided for the dismissal of the motion of the Former Nortel Employees are applicable to this case.

[9] SERP payments are based on services provided to Indalex prior to April 2009. These obligations are, in my view, pre-filing unsecured obligations. A breach of the SERP payment obligations gives rise to an unsecured claim of the SERP Group against the Indalex Applicants. The SERP Group is stayed from enforcing these payment obligations.

[10] The SERP Group has not established that they are entitled to any priority with respect to their SERP benefits and there is, in my view, no basis in principle, to treat the SERP Group differently than any other unsecured creditors of the Indalex Applicants. The reinstatement of the SERP payments would, in my view, represent an improper re-ordering of the existing priority regime.

Page: 3

[11] The Amcnded and Restated Order authorizes the Indalex Applicants to pay all reasonable expenses incurred by the Indalex Applicants in carrying on their business in the ordinary course. SERP payments are not, in my view, payments required to carry on the business and, accordingly, the Indalex Applicants are not authorized to pay the monthly SERP payments.

[12] In certain CCAA proceedings, the court has granted relief to permit payment of pre-filing unsecured debt. However, in these cases, such payments have for the most part, been considered to be crucial to the ongoing business of the debtor company. In this case, the Indalex Applicants are seeking a going concern solution for the benefit of all stakeholders and their resources should be used for such purposes. I have not been persuaded that the SERP payments are crucial to the ongoing business of the Indalex Applicants and such payments offer no apparent benefit to the Indalex Applicants. (*Re Nortel, supra*, at paragraphs 80 and 86.)

[13] The SERP Group submits that there are hardship issues that should be taken into account. In Nortel, a hardship exception was made. However, the Nortel exception was predicated, in part, on the reasonable expectation that there will be a meaningful distribution to unsecured creditors, including the Former Nortel Employees. The Nortel hardship exception recognizes that any distribution would represent an advance on the general distribution. The situation facing the Indalex Applicants is different. The Indalex Applicants have significant secured creditors and unlike the situation in Nortel, it is premature to comment on the prospects of any meaningful distribution to unsecured creditors.

[14] Counsel to SERP Group also submitted that CCAA protection in this case had been obtained for a company that was liquidating its assets. Counsel for the SERP Group submitted that Indalex had put itself up for sale and commenced a "marketing process" and as such it was not restructuring, rather, it was selling itself. This led to the submission that the cutting of benefits payable to the SERP Group was not necessary or justified for the sale of the company under the CCAA.

[15] I fail to see the relevance of this submission. At the present time, the Applicants are properly under CCAA protection. No motion has been brought to challenge the appropriateness of the CCAA proceedings and, in my view, nothing in the CCAA precludes the ability of a debtor applicant to sell its assets. See *Re Nortel Networks Corporation* – endorsement released July 23, 2009 on this point.

[16] Finally, counsel to SERP Group placed emphasis on the fact that the amount required to satisfy the obligations to SERP Group is not significant. While this submission may be attractive on the surface, to give effect to this argument would violate a fundamental tenet of insolvency law, namely, that all unsecured creditors receive equal treatment. In my view, there is no basis to prefer the SERP Group or, indeed, any retired executive who is entitled to SERP payments in priority to other unsecured creditors.

[17] Counsel to SERP Group also relied upon *Doman Industries et al* (2004) B.C.S.C. 7333 for the proposition that, the fact that a company can reduce its costs if it can terminate contracts, is not sufficient for a CCAA court to authorize the termination of the contract. In *Doman, supra*, the point at issue concerned licences under the *Forest Act* which created the concept of

Page: 4

replaceable contracts. Doman held certain licences. As noted by Tysoe J. (as he then was), at paragraph 7, a replaceable contract is a form of evergreen contract which contains statutorily mandated provisions, the most important of which is that the licence holder must offer a new or replacement contract to the contractor upon each expiry of the term of the contract as long as the contractor is not in default under the contract. That is not the situation in this case. The contractual situation in *Doman, supra*, is not, in my view, comparable to this case. *Doman* is clearly distinguishable on the facts.

[18] For the forgoing reasons, the motion of SERP Group for reinstatement of SERP benefits is dismissed.



MORAWETZ J.

Heard and Decided: July 2, 2009

Typed Version Released: July 24, 2009

TAB 'C'

This is ***Exhibit "C"*** referred to in the affidavit of **KEITH B. CARRUTHERS** sworn before me, this day of August, 2009

.....
Commissioner for taking affidavits

RETIREMENT PLAN
for
EXECUTIVE EMPLOYEES
of
CARADON LIMITED AND ASSOCIATED COMPANIES

(As Amended and Restated at January 1, 1995)

ARTICLE 1 - HISTORY, PURPOSE AND INTERPRETATION

1. 1.1 The Retirement Plan for Executive Employees of Indal Limited and Associated Companies (the "Plan") was established by Indal Limited and Associated Companies (the "Company") on January 1, 1983 for the purpose of providing pensions to its senior executives, corporate employees or operating heads ("Designated Executive").

Prior to January 1, 1983, Designated Executives participated in the Retirement Plan for Salaried Employees of Indal Limited and Associated Companies (the "Former Plan"). The Former Plan superseded the Retirement Plan for Salaried Employees of Indal Limited and Associated Companies which commenced August 1, 1967 and all benefits provided by this plan were paid under the terms of the Former Plan. Effective January 1, 1983, the Plan assumed all liabilities accrued under the Former Plan in respect of the employees and assets were transferred from the Former Plan to this Plan accordingly.

- 1.2 The Plan was amended and restated effective January 1, 1988 to incorporate amendments up to December 31, 1987 and revisions required by the Pension Benefits Act, Ontario.
- 1.3 Effective January 1, 1990, the Plan was amended to comply with pension reform legislation in Quebec and Manitoba.
- 1.4 Effective January 1, 1991, additional retirement incomes were granted to retired Members and Spouses of deceased Members as outlined in Appendix A of this Plan.
- 1.5 Effective December 31, 1991, the Plan was amended to comply with pension reform legislation in New Brunswick.
- 1.6 Effective December 31, 1991, there are no members in Manitoba.
- 1.7 Effective January 1, 1992, the Plan was amended and restated to incorporate amendments up to December 31, 1991 and revisions required under the Income Tax Act.
- 1.8 Effective September 24, 1993, as a result of a reorganization, Alumiprime Windows Limited and Commercial Aluminum Limited were designated by the Company to participate in the Plan as Employers.
- 1.9 Effective October 19, 1993, as a result of a reorganization, Fabricated Steel Products, a Division of Indal was incorporated as Fabricated Steel Products Inc. and was designated by the Company to participate in the Plan.
- 1.10 Effective October 20, 1993, RTZ Canada Inc. sold the shares of Indal Limited to MB Caradon plc.

- 1.11 Effective October 20, 1993, RTZ Canada Inc. established the RTZ Canada Salaried/Executive Plan for Alumiprime Windows Limited, Commercial Aluminum Limited, 1043802 Ontario Limited and Inactives ("RTZ Canada Pension Plan") which Plan assumed liabilities accrued to these executive employees under the Plan. Assets and related surplus were transferred from the Plan to the RTZ Canada Pension Plan.
- 1.12 Effective December 31, 1993, Indal Limited was wound up into its parent company Indal Corporation. Indal Corporation assumed sponsorship of the Plan and all references to Indal Limited throughout the Plan were replaced with Indal Corporation.
- 1.13 Effective March 31, 1994, as a result of a name change, all references to Indal Corporation throughout the Plan were replaced with Caradon Limited. The reference to "Lock-Wood Ltd" in Appendix B was replaced with Caradon Lock-Wood, a division of Caradon Limited.
- 1.14 Effective January 1, 1995, the Plan is hereby amended and restated to incorporate revisions required to comply with pension reform in various provinces.
- 1.15 The terms of the Plan, as amended and restated, will apply to Members who retire, terminate employment or die on and after January 1, 1995, unless stated otherwise. The benefits of Members who retired, terminated or died before this date will be determined by the terms of the Plan in effect at the relevant date.
- 1.16 The Plan, as amended from time to time, will remain in effect subject to the continued registration thereof by:
 - (a) the relevant tax authorities as is necessary to establish that the Employer is entitled to deduct its contributions to this registered pension plan from taxable income before the computation of income tax under the Income Tax Act and any other applicable tax legislation; and
 - (b) the Pension Commission of Ontario in accordance with the Pension Benefits Act of Ontario and any other applicable pension legislation.

ARTICLE 2 - DEFINITIONS

2. For the purposes of the Plan, the following words and phrases will have the meaning set forth below, unless the context requires otherwise:

2.1 **Actuarial Equivalent** means a pension of an equivalent value using actuarial tables and such other methods and assumptions as may be adopted by the Company on the recommendation of the Actuary, subject to the requirements of Applicable Pension Legislation and the Income Tax Act.

2.2 **Actuary** means a Fellow of the Canadian Institute of Actuaries, or the firm employing such person, appointed by the Company from time to time for the purposes of the Plan.

2.3 **Affiliate Company** means a Canadian or foreign body corporate which is an affiliate of the Company within the meaning of the Business Corporations Act (Ontario), and which has not been designated by the Company for participation in the Plan.

2.4 **Alberta Member** means a Member in Continuous Employment in Alberta.

2.5 **Applicable Date** means, with respect to an Employee in Continuous Employment in:

- (a) British Columbia, January 1, 1993;
- (b) Alberta, January 1, 1987;
- (c) Saskatchewan, July 1, 1981;
- (d) Ontario, January 1, 1988;
- (e) Quebec, January 1, 1990; and
- (f) New Brunswick, December 31, 1991

Applicable Pension Legislation means the following statutes and their regulations, as amended or replaced from time to time:

- (a) Pension Benefits Standards Act of British Columbia;
- (b) Employment Pension Plans Act of Alberta;
- (c) Pension Benefits Act of Saskatchewan;
- (d) Pension Benefits Act of Ontario;
- (e) Supplemental Pension Plans Act of Quebec;
- (f) Pension Benefits Act of New Brunswick.

- 2.6 Beneficiary** means a person designated by a Member under Section 12.1 and includes the Member's estate where there is no designated beneficiary.
- 2.7 British Columbia Member** means a Member in Continuous Employment in British Columbia.
- 2.8 Commuted Value** means, in relation to benefits that a person has a present or future entitlement to receive, a lump sum amount which is the actuarial present value of those benefits computed using rates of interest, the actuarial tables and other assumptions as may be adopted by the Company, subject to Applicable Pension Legislation and the Income Tax Act.
- For clarification purposes, when determining Commuted Values, unisex tables must be used for all years of Pensionable Service.
- 2.9 Company** means Caradon Limited. Where any reference in the Plan is made to any action to be taken, consent, approval or opinion to be given, discretion or decision to be exercised by the Company, "Company" means Caradon Limited acting through the board of directors of Caradon Limited or any person authorized by that board of directors for purposes of the Plan.
- 2.10 Continuous Employment** means the years and completed months and days of an Employee's uninterrupted period of employment with any Employer since his last date of hire by an Employer, including any period of lay-off (not in excess of 1 year) and any period of temporary suspension of employment. If the Employee terminates employment with an Employer and is subsequently re-employed by an Employer within the 2 year period immediately following his termination of employment, for purposes of determining the Employee's Continuous Employment, the Employee's employment will be deemed to be uninterrupted although that period during which the Employee was not in employment with an Employer will be excluded from the Employee's Continuous Employment.
- 2.11 Corporate Officer** means an officer of an Employer, who is designated by the Company, from time to time, as a Corporate Officer for the purposes of the Plan.
- 2.12 Designated Executive** means a Corporate Officer, a Senior Corporate Employee or an Operating Head.
- 2.13 Earnings** means basic monthly cash compensation paid by the Employer, as applicable, including commissions but excluding:
- (a) overtime bonuses, and
 - (b) other special compensation,
- as determined by the Employer.

- 2.14 Employee** means a person who is employed by an Employer on a salaried basis in Canada.
- 2.15 Employer** means the Company and any subsidiary or affiliate of the Company designated by the Company to participate in the Plan, as set out in Appendix B.
- 2.16 Excess Contributions** means an amount determined under Section 9.7.
- 2.17 Final Average Earnings** means 12 times the average of the Member's Earnings during the 36 consecutive months of Pensionable Service within the 120 month period preceding the Member's retirement, death or termination of Continuous Employment in which the highest average is attained. If the Member has not completed 36 months of Pensionable Service, his Final Average Earnings will be based on 12 times the average of the Member's Earnings during the Member's months of Pensionable Service.
- 2.18 Funding Agent** means a trust company, insurance company authorized to carry on a life insurance business in Canada or a group of at least 3 individuals resident in Canada, at least one of whom is independent of all Employers and includes any combination or successors thereof appointed by the Company from time to time to hold, administer and invest the Fund.
- 2.19 Funding Agreement** means the agreement or agreements entered into between the Company and the Funding Agent for purposes of this Plan.
- 2.20 Fund** means the assets held from time to time by the Funding Agent under the terms of the Funding Agreement.
- 2.21 Government Benefit Base** means the average of the YMPEs for the period used in the determination of the Member's Final Average Earnings.
- 2.22 Income Tax Act** means the Income Tax Act, Statutes of Canada and the Regulations thereunder, as amended or replaced from time to time.
- 2.23 Interest** means interest credited annually on:
- (a) Required Contributions
- a Member's required contributions made to the Prior Plan and transferred to the Plan, at a rate equal to the applicable average of the yields of 5 year personal fixed term chartered bank deposits (CANSIM series B14045), except where Applicable Pension Legislation requires that a different rate be used; and
- (b) Lump Sum Payments
- lump sum payments out of the Fund:
- (1) at the rate described in Section 2.22(a), if the refund is attributable to required contributions; and

- (2) in all other cases, at the rate originally used to calculate the Commuted Value, where applicable.

Subject to Applicable Pension Legislation, interest will commence to accrue no later than the first of the month following the month in which the contributions were required to be paid into the Fund and will be credited to the date the Member's Continuous Employment terminates.

Subject to Applicable Pension Legislation, lump sum payments (or transfers) out of the Fund will be credited with interest from the date of determination to the date of payment (or transfer).

- 2.24 Member** means a Designated Executive who has become a Member of the Plan pursuant to Article 3 and who continues to be entitled to benefits under the Plan.
- 2.25 New Brunswick Member** means a Member in Continuous Employment in New Brunswick.
- 2.26 Ontario Member** means a Member in Continuous Employment in Ontario.
- 2.27 Operating Head** means an Employee who is designated by the Employer from time to time as an Operating Head for the purposes of the Plan.
- 2.28 Pension and Benefits Committee** means the Pension and Benefits Committee appointed pursuant to Section 13.1.
- 2.29 Pensionable Service** means the Member's Continuous Employment calculated in exact years, months and days during which the Member participated in the Plan, or made required contributions to the Prior Plan and includes Continuous Employment before joining the Prior Plan, not in excess of one year. Pensionable Service excludes all leaves of absence except in accordance with Article 5.
- 2.30 Plan** means the Retirement Plan for Executive Employees of Caradon Limited and Associated Companies, as amended and restated from time to time.
- 2.31 Plan Year** means the calendar year.
- 2.32 Prior Plan** means the Retirement Plan for Salaried Employees of Caradon Limited and Associated Companies and/or the Pension Plan for Salaried Employees of Fabricated Steel Products Inc. as in effect on the later of December 31, 1982 or the day immediately preceding the Employee's classification as a Designated Executive.
- 2.33 Quebec Member** means a Member in Continuous Employment in Quebec.
- 2.34 Saskatchewan Member** means a Member in Continuous Employment in Saskatchewan.
- 2.35 Senior Corporate Employee** means an Employee who is designated by the Employer,

from time to time, as a Senior Corporate Employee for the purposes of the Plan.

2.36 Spouse means, at the time a determination of marital status is required, in relation to:

(a) British Columbia

a British Columbia Member, a person of the opposite sex who:

- (1) is married to the Member and is not living separate and apart from him; or
- (2) has been living with the Member as husband and wife for one year;

(b) Alberta

an Alberta Member, a person of the opposite sex who:

- (1) is married to the Member and is not living separate and apart from him; or
- (2) has been living with the Member for one year and is held out by the Member in the community in which they live as his consort;

(c) Saskatchewan

a Saskatchewan Member, a person of the opposite sex who:

- (1) is married to the Member; or
- (2) is cohabitating with the Member as husband and wife at the relevant time and who has been cohabitating continuously with the Member as his spouse for at least one year prior to the relevant time;

(d) Ontario

an Ontario Member, a person of the opposite sex who:

- (1) is married to the Member and is not living separate and apart from the Member; or
- (2) is not married to the Member but the Member and that person are living together in a conjugal relationship;
 - (A) continuously for a period of not less than one year, or

- (B) in a relationship of some permanence, if they are the natural or adoptive parents of a child, both as defined in the Family Law Act (Ontario);

(e) Quebec

a Quebec Member, a person of the opposite sex who:

- (1) is married to the Member; or
- (2) has been living in a conjugal relationship with an unmarried Member for a period of not less than one year if,
 - (A) at least one child is born, or to be born, of their union,
 - (B) they have adopted, jointly, at least one child while living together in a conjugal relationship, or
 - (C) one of them have adopted at least one child who is the child of the other, while living together in a conjugal relationship; and

(f) New Brunswick

a New Brunswick Member, a person of the opposite sex who:

- (1) is married to the Member;
- (2) is married to the Member by a marriage that is voidable and has not been voided by a declaration of nullity;
- (3) is married to the member in good faith but the marriage is void and the Member and person have been cohabiting within the preceding year; or
- (4) is not married to the Member but the Member and that person have been cohabiting,
 - (A) continuously for a period of not less than one year in a conjugal relationship in which one person has been substantially dependent upon the other for support, or
 - (B) in a relationship of some permanence where there is a child born of whom they are the natural parents,

provided the Member and that person have cohabited within the preceding year.

2.37 Total Disability means a disability:

- (a) throughout which the Member is physically or mentally impaired so that he is prevented from engaging in any employment for which he is reasonably suited by virtue of his education, training or experience;
- (b) which is reasonably expected to continue for the remainder of the Member's lifetime;
- (c) which is certified, in writing, by a medical doctor licensed in Canada or where the Member resides; and
- (d) in respect of which the Member is entitled to benefits from the Employer's long term disability program.

2.38 YMPE means, in respect of any Plan Year, the year's maximum pensionable earnings as defined under the Canada/Quebec Pension Plan.

In this Plan, unless the context requires otherwise, reference to the male gender will include the female gender and words importing the singular number only include the plural number and vice versa.

ARTICLE 3 - ELIGIBILITY AND MEMBERSHIP**3. 3.1 Existing Members**

Each Designated Executive who was a Member of the Plan on December 31, 1994 will continue to be a Member of the Plan.

3.2 New Members

Each Employee hired on and after January 1, 1995 will join the Plan on the later of:

- (a) the first day of the month coincident with or next following the date of hire; or
- (b) the date on which he becomes a Designated Executive.

3.3 Membership

A Designated Executive will become a Member by signing the appropriate forms prescribed by the Pension and Benefits Committee.

3.4 Cessation of Plan Membership

A Member will cease to accrue benefits hereunder only upon the earliest of:

- (a) termination of Continuous Employment,
- (b) termination of the Plan, or
- (c) transfer in accordance with Section 7.2.

3.5 Re-employment of Former Employees

- (a) Subject to Section 3.5(b), if an Employee's Continuous Employment is terminated and he is later re-employed by an Employer as a Designated Executive, he will, for purposes of the Plan, be treated as a new Employee, except that any right to a deferred pension he may have as a result of his prior period of Continuous Employment will not be affected by this provision. For greater certainty:
 - (1) any benefit earned after the date of re-employment will be calculated based on the period of Pensionable Service, membership in the Plan (or Prior Plan, as applicable) and Final Average Earnings after such date; and

- (2) if such former employee has commenced to receive a pension under the Plan, his pension will cease and, at his subsequent retirement, the pension relating to his prior period of Continuous Employment will be actuarially adjusted to reflect the shorter period during which such pension will be paid.
- (b) The previous period of Continuous Employment of a Member described in Section 3.5(a) will be reinstated provided the Member reimburses the Fund an amount, if any, equal to the amount withdrawn from the Fund upon his earlier termination of Continuous Employment, plus Interest, as determined by the Pension and Benefits Committee.

If the Member's benefits have been reinstated under this Section 3.5(b), the benefit payable under the Plan at the Member's subsequent retirement, death or termination of Continuous Employment will be based on:

- (1) all periods of Pensionable Service;
- (2) all periods of membership in the Plan (or Prior Plan, as applicable);
- (3) Final Average Earnings determined at his subsequent retirement, death or termination of Continuous Employment. For this purpose only, "Earnings" means the Member's Earnings received during all periods of Continuous Employment with the Employer; and
- (4) the terms of the Plan in effect at his subsequent retirement, death or termination of Continuous Employment.

If the Member retires, dies or subsequently terminates Continuous Employment with the Employer prior to reimbursing the full amount of the amount withdrawn on his earlier termination of Continuous Employment, plus Interest, benefits payable under the Plan will be reduced in the manner determined by the Actuary.

Any benefits reinstated under this Section 3.5(b) will be subject to the Income Tax Act, including certification of past service pension adjustments (as defined under the Income Tax Act).

ARTICLE 4 - CONTRIBUTIONS TO THE PLAN**4. 4.1 Member Required Contributions**

A Member is not required or permitted to contribute to the Plan.

4.2 Member Required Contributions under the Prior Plan

Upon becoming a Member of the Plan, the balance, if any, of the Member's required contributions to the Prior Plan, plus Interest, will be transferred to the Plan.

4.3 Employer Contributions

(a) Subject to Section 4.3(b) and (c), the Employer will make such contributions to the Fund as are required, based on the advice of the Actuary, to provide:

- (1) the normal cost of the benefits currently accruing to its Members under the Plan; and
- (2) for the proper amortization of any unfunded liability or solvency deficiency,

both in accordance with the requirements of Applicable Pension Legislation, after taking into account the assets of the Fund and all other relevant factors.

(b) The contributions made by the Employer to the Fund in accordance with Section 4.3(a), in any Plan Year, will not exceed such maximum amount as the Employer may deduct in computing its taxable income under the Income Tax Act for such Plan Year.

(c) If at any time while the Plan continues in existence the Actuary certifies that the assets of the Fund exceed the actuarial liabilities of the Plan in respect of benefits defined in the Plan ("surplus"), such surplus assets, or any portion of such assets, may be used by the Employer to reduce its contribution obligations under Section 4.3(a), subject to any limitations prescribed under Applicable Pension Legislation and the Income Tax Act.

4.4 Overpayment

Subject to the prior approval of the Superintendent of Pensions of Ontario, any payment by the Employer in a Plan Year in excess of the amount required to be contributed under this Article 4 (or payments made by the Employer that should have been paid out of the Fund) may be returned to the Employer, out of the Fund in order to avoid revocation of the registration of the Plan.

4.5 Remittance of Contributions to the Fund

The Employer will remit to the Funding Agent for deposit in the Fund:

- (a) the Employer's contributions in respect of the normal cost of benefits in monthly instalments within 30 days following the month for which the contributions are payable or such other period prescribed by Applicable Pension Legislation; and
- (b) the Employer's contributions in respect of special payments to amortize an unfunded actuarial liability or solvency deficiency, in equal monthly instalments throughout the Plan Year.

ARTICLE 5 - ACCRUAL DURING SPECIAL LEAVE OF ABSENCE**5. 5.1 Meaning of Special Leave of Absence**

Throughout this Article 5, "Special Leave of Absence" means an unpaid leave of absence attributable to:

- (a) a Total Disability;
- (b) an injury occurring on and after January 2, 1990 in respect of which the Member is entitled to receive benefits under the Workers' Compensation Act ("Job-Related Disability"); or
- (c) a parental leave resulting from the birth or adoption of a child as defined under relevant employment standards legislation ("Parental Leave").

5.2 Plan Membership and Pensionable Service During Leave Period

Each year, or part thereof, during the Special Leave of Absence counts as a year, or part thereof, of Plan membership and Pensionable Service for the Member:

(a) Total Disability

until the earliest of the Member's date of recovery, termination, death or normal retirement date, if the Special Leave of Absence is attributable to a Total Disability;

(b) Job-Related Disability

until the earliest of the expiry of the period prescribed by the relevant workers' compensation legislation, the date the Member returns to active Continuous Employment, death or normal retirement date, if the Special Leave of Absence is attributable to a Job-Related Disability; and

(c) Parental Leave

until the earliest of the expiry of the period prescribed by the relevant employment standards legislation, the date the Member returns to active Continuous Employment, death or normal retirement date, if the Special Leave of Absence is attributable to a Parental Leave;

subject to a maximum Pensionable Service accrual for all Special Leaves of Absence (other than a Special Leave of Absence attributable to Total Disability) of 5 years plus one additional year in the case of each Parental Leave (under the Income Tax Act, a period of parenting), further subject to an overall maximum of 8 years of Pensionable Service.

5.3 Earnings During Special Leave of Absence

For the purpose of accruals during a Special Leave of Absence described under Section 5.2:

- (a) subject to Section 5.3(b), the Member's Earnings are deemed to be equal to the rate of Earnings received by the Member immediately before the commencement of the Special Leave of Absence; and
- (b) for a British Columbia Member, an Ontario member and a Quebec Member the Member's Earnings are deemed to be equal to the rate of Earnings the Member would have received had the Member not taken a Special Leave of Absence, if the Special Leave of Absence is attributable to a Parental Leave.

Where applicable, under this Section 5.3, all Earnings will be prescribed pursuant to the Income Tax Act and Regulations.

5.4 Leave Ending Before Normal Retirement Date

If the Member's Special Leave of Absence ends before his normal retirement date and

- (a) the Member returns to active Continuous Employment, his pension will be calculated based on the provisions of the Plan, as modified by Sections 5.2 and 5.3, in effect at the date of his subsequent termination, death or retirement; or
- (b) the Member does not return to active Continuous Employment, he will be deemed to have terminated his Continuous Employment for purposes of the Plan as of the date his Special Leave of Absence ends and his pension will be calculated based on the provisions of the Plan, as modified by Sections 5.2 and 5.3, in effect at the date of his deemed termination.

5.5 Leave Continuing Until Normal Retirement Date

If the Member's Special Leave of Absence continues until his normal retirement date, the Member will be deemed to retire on his normal retirement date and his pension will be calculated based on the provisions of the Plan, as modified by Section 5.2 and 5.3, in effect at the date of his deemed retirement.

5.6 Death During Leave Period

If the Member dies during the Special Leave of Absence, the death benefit paid to such Member's Spouse or Beneficiary will be determined and payable in accordance with Section 12.4, as modified by Sections 5.2 and 5.3.

ARTICLE 6 - MANAGEMENT OF THE FUND**6. 6.1 Administration of the Fund**

The Fund will be administered by the Funding Agent in accordance with the Funding Agreement.

6.2 Investment of the Fund

The assets of the Fund will be invested in accordance with Applicable Pension Legislation.

6.3 Expenses

All normal and reasonable fees and expenses incurred in the operation and administration of the Plan and the Fund will be paid from the Fund. Where the Employer has made payments on account of such expense, the Employer will be entitled to reimbursement by the Funding Agent from assets of the Fund. Fees and expenses of the Employer and its agents are payable from the Fund unless prohibited by Applicable Pension Legislation.

6.4 Withdrawal of Assets from an Ongoing Plan

Subject to receiving the prior consent of the relevant regulatory authorities, if, at any time while the Plan continues in existence, the Actuary certifies that the assets of the Fund exceed its liabilities in respect of any or all of the following periods:

- (a) from January 1, 1983 to and including December 31, 1986;
- (b) from January 1, 1987 to and including December 31, 1994; and
- (c) after December 31, 1994,

then all or part of such excess of Plan assets over Plan liabilities may be refunded to the Employer.

ARTICLE 7 - TRANSFER OF EMPLOYEES

7. 7.1 Transfer to the Plan

If an employee of an Employer or an Affiliate Company, as applicable, is transferred to a category of employment such that he becomes a Designated Executive for purposes of the Plan, such Designated Executive will automatically become a Member of the Plan.

If applicable, upon becoming a Member of the Plan, the Designated Executive will cease to be a member of the Prior Plan. The value of benefits accrued under the Prior Plan to the date the Employee is classified as a Designated Executive, as determined by the Actuary, will be transferred to the Plan. Any benefit paid from the Plan will be calculated on the basis of:

- (a) the Member's Pensionable Service;
- (b) the Member's Final Average Earnings determined at his subsequent retirement, death or termination of Continuous Employment; and
- (c) the Member's employment with each Employer and his membership in the Prior Plan will be deemed to be Continuous Employment and membership in the Plan respectively, for vesting and locking-in purposes.

Any benefit accrual under this Section 7.1 will be subject to the Income Tax Act, including certification of past service pension adjustment (as defined under the Income Tax Act).

7.2 Transfer Out of the Plan

If a Member of the Plan is transferred to other employment with an Employer, or to an Affiliate Company, and ceases to be a Designated Executive for the purposes of the Plan, the Member's accrual of benefits under the Plan will cease. No benefit will be payable from the Plan until such time as the Member subsequently retires, terminates or dies. Any benefit paid from the Plan will be calculated on the basis of:

- (a) the Member's Pensionable Service determined at his date of transfer;
- (b) the Member's Final Average Earnings determined at his subsequent retirement, death or termination of Continuous Employment;
- (c) the Member's other employment with an Employer or Affiliate Company will be deemed to be Continuous Employment for vesting, locking-in purposes and eligibility to retire early under Sections 8.3 and 8.4; and
- (d) the Member's participation in another registered pension plan sponsored by an Employer or Affiliate Company will be deemed to be membership in the Plan for vesting, locking-in purposes and eligibility to retire early under Sections 8.3 and 8.4.

ARTICLE 8 - RETIREMENT DATE

8. 8.1 Normal Retirement Date

For purposes of the Plan, normal retirement date means the first day of the month coincident with or next following the Member's 65th birthday.

8.2 Early Retirement Date

If the Continuous Employment of a Member terminates after he has attained age 55 and before his normal retirement date, and Sections 8.3 and 8.4 do not apply,

- (a) the Member will be considered to have retired early for the purposes of the Plan on his early retirement date which is the first day of the month coincident with or next following the date on which the Member's Continuous Employment terminates; and
- (b) the Member will be entitled to receive an early retirement pension.

8.3 Special Early Retirement Date

If the Continuous Employment of a Member who has completed 10 or more years of Continuous Employment terminates after he has attained age 55 and before his normal retirement date, and Section 8.4 does not apply,

- (a) the Member will be considered to have retired early for the purposes of the Plan on his special early retirement date which is the first day of the month coincident with or next following the date on which the Member's Continuous Employment terminates, and
- (b) the Member will be entitled to receive a special early retirement pension.

8.4 Unreduced Early Retirement Date

If the Continuous Employment of a Member who has completed 20 years of Continuous Employment terminates after he has attained age 60 and before his normal retirement date,

- (a) the Member will be considered to have retired early for the purposes of the Plan on his unreduced early retirement date which is the first day of the month coincident with or next following the date on which the Member's Continuous Employment terminates, and
- (b) the Member will be entitled to receive an unreduced early retirement pension.

8.5 Postponed Retirement Date

If, under provincial law and the Employer's policy concerning retirement, a Member has remained in Continuous Employment after his normal retirement date, the Member may retire for the purposes of the Plan on the first day of any month after his normal retirement date, which date will be the Member's postponed retirement date.

In no event will a Member's retirement be deferred beyond the end of the calendar year in which the Member attains age 71, provided that with effect from January 1, 1997, a Member shall retire, or be deemed to have retired for the purpose of the Plan, not later than the first day of December of the calendar year in which the member attains age 69, or such other time as is acceptable under the Income Tax Act.

ARTICLE 9 - AMOUNT OF PENSION BENEFIT**9. 9.1 Normal Retirement Pension**

A Member who retires on his normal retirement date will receive an annual pension, commencing on his normal retirement date, in an amount equal to (a) plus (b) as follows:

- (a) 1.25% of the Member's Final Average Earnings up to the Government Benefit Base; plus
- (b) 2% of the Member's Final Average Earnings in excess of the Government Benefit Base;

multiplied by the Member's Pensionable Service.

In no event will the benefit accrued in the Plan Year under this Section 9.1 result in an amount that is a pension adjustment (as defined in the Income Tax Act), or any other amount determined under the Income Tax Act, being inappropriate having regard to the provisions of the Income Tax Act and the purposes for which the amount is determined.

9.2 Early Retirement Pension

A Member who retires early under Section 8.2 may elect either:

- (a) a pension, commencing on the first day of any month on or following his early retirement date up to the Member's normal retirement date, calculated according to the formula in Section 9.1. The pension payable under this Section 9.2(a) will be reduced by 0.4% for each month by which the Member's pension commencement date precedes the date at which the Member would have been eligible for an unreduced pension under Section 8.4 had the Member remained in Continuous Employment; or
- (b) a deferred pension, commencing at normal retirement date, calculated according to the formula in Section 9.1,

based on the Member's Pensionable Service at his early retirement date.

9.3 Special Early Retirement Pension

A Member who retires early in accordance with Section 8.3 will receive a pension, commencing on the Member's special early retirement date, equal to the pension calculated according to the formula in Section 9.1 based on the Member's Pensionable Service at his special early retirement date. The pension payable under this Section 9.3 will be reduced by 1/6 of 1% for each month by which the Member's pension commencement date precedes the date at which the Member would have been entitled to an unreduced pension under Section 8.4 had the Member remained in Continuous Employment, subject to any minimum reduction required by the Income Tax Act and its regulations.

9.4 Unreduced Early Retirement Pension

A Member who retires early in accordance with Section 8.4 will receive a pension, commencing on the Member's unreduced early retirement date, equal to the pension calculated according to the formula in Section 9.1 based on the Member's Pensionable Service at his unreduced early retirement date.

9.5 Postponed Pension Benefit

Subject to Section 9.6, a Member who remains in Continuous Employment after his normal retirement date in accordance with Section 8.5 will receive a pension, commencing on the Member's postponed retirement date, equal to the pension calculated according to the formula in Section 9.1 based on Earnings, Final Average Earnings and Pensionable Service at the Member's postponed retirement date.

9.6 Postponed Pension Benefit - Quebec Members

- (a) Subject to Section 9.6(b), each Quebec Member who elects to remain in Continuous Employment after his normal retirement date under Section 8.5 will continue to accrue benefits to his postponed retirement date. At such Member's postponed retirement date, he will receive an annual pension, commencing on his postponed retirement date, calculated in accordance with Section 9.5.

Such pension will, however, not be less than the minimum required under Applicable Pension Legislation.

- (b) Each Quebec Member who postpones his retirement under Section 8.5 may elect to commence receiving the whole, or any portion, of his pension on or after his normal retirement date, to the extent necessary to compensate him for a permanent reduction in his Earnings from the level in effect preceding his normal retirement date.

If the Quebec Member elects to commence receipt of all, or any portion of, his pension under this Section 9.6(b), the Quebec Member will receive on his postponed retirement date the balance of his annual pension, as determined in accordance with Section 9.6(a) but adjusted to reflect the amount of payments made to him under this Section 9.6(b).

The Quebec Member may make an election under this Section 9.6(b) not more frequently than once every 12 months.

9.7 Minimum Benefit With Respect to Required Contributions

(a) British Columbia

If a British Columbia Member retires, dies or terminates Continuous Employment on or after January 1, 1993, the Commuted Value of such Member's pension payable under this Article 9 and accrued to December 31, 1992, will be at least equal to the Member's required contributions made to the Prior Plan before January 1, 1993, plus interest.

If a British Columbia Member retires, dies or terminates Continuous Employment on or after January 1, 1993, such Member, his Spouse or Beneficiary, as applicable, will be entitled to the amount ("Excess Contribution") equal to (1) less (2) as follows:

- (1) the Member's required contributions made to the Prior Plan on and after January 1, 1993, plus interest; and
- (2) 50% of the Commuted Value of the Member's pension accrued or otherwise granted on and after January 1, 1993.

The Excess Contribution will be paid in accordance with Section 9.8.

(b) Alberta

If an Alberta Member retires, dies or terminates Continuous Employment on or after January 1, 1987, the Commuted Value of a Member's pension payable under this Article 9 and accrued to December 31, 1986 will be at least equal to the Member's required contributions made to the Prior Plan before January 1, 1987, plus Interest.

If an Alberta Member retires, dies or terminates Continuous Employment on or after January 1, 1987, the Member or his Spouse, as applicable, will be entitled to an amount ("Excess Contribution") equal to (1) less (2) as follows:

- (1) the Member's required contributions made to the Prior Plan on and after January 1, 1987, plus Interest; and

- (2) 50% of the Commuted Value of the Member's pension accrued or otherwise granted on and after January 1, 1987.

Notwithstanding the foregoing, no Excess Contribution is payable if the Alberta Member dies in Continuous Employment (or after he terminates Continuous Employment having elected to leave his Excess Contribution in the Plan) and, at the time of his death, he has no Spouse. Where payable, the Excess Contribution will be paid in accordance with Section 9.8.

(c) Saskatchewan

If a Saskatchewan Member retires or terminates Continuous Employment on or after July 1, 1981, the Commuted Value of such Member's pension payable under this Article 9 and accrued to January 1, 1969 will be at least equal to the Member's required contributions made to the Prior Plan before January 1, 1969, plus Interest.

If a Saskatchewan Member retires or terminates Continuous Employment on or after July 1, 1981, the Member, his Spouse or Beneficiary, as applicable, will be entitled to an amount ("Excess Contribution") equal to (1) less (2) as follows:

- (1) the Member's required contributions made to the Prior Plan on and after January 1, 1969 plus Interest; and
- (2) 50% of the Commuted Value of the Member's pension accrued or otherwise granted on and after January 1, 1969.

The Excess Contribution will be paid in accordance with Section 9.8.

(d) Ontario

If an Ontario Member retires, dies or terminates Continuous Employment on or after January 1, 1988, the Commuted Value of such Member's pension payable under this Article 9 and accrued to December 31, 1986 will be at least equal to the Member's required contributions made to the Prior Plan before January 1, 1987, plus Interest.

If an Ontario Member retires, dies or terminates Continuous Employment on or after January 1, 1988, such Member, his Spouse or Beneficiary, as applicable, will be entitled to an amount ("Excess Contribution") equal to (1) less (2) as follows:

- (1) the Member's required contributions made to the Prior Plan on and after January 1, 1987, plus Interest; and

- (2) 50% of the Commuted Value of the Member's pension accrued or otherwise granted on and after January 1, 1987.

The Excess Contribution will be paid in accordance with Section 9.8.

(e) Quebec

If a Quebec Member retires, dies or terminates Continuous Employment on or after January 1, 1990, the Commuted Value of such Member's pension payable under this Article 9 and accrued to December 31, 1989 will be at least equal to the Member's required contributions made to the Prior Plan before January 1, 1990, plus Interest.

If a Quebec Member retires, dies or terminates Continuous Employment on or after January 1, 1990, such Member, his Spouse or Beneficiary, as applicable, will be entitled to an amount ("Excess Contribution") equal to (1) less (2) as follows:

- (1) the Member's required contributions made to the Prior Plan on and after January 1, 1990 (excluding such contributions made on and after his normal retirement date), plus Interest; and
- (2) 50% of the Commuted Value of the Member's pension accrued or otherwise granted on and after January 1, 1990 (excluding pension accrued on and after his normal retirement date).

The Excess Contribution will be paid in accordance with Section 9.8.

(f) New Brunswick

If a New Brunswick Member retires, dies or terminates Continuous Employment, such Member, his Spouse or Beneficiary, as applicable, will be entitled to an amount ("Excess Contribution") equal to (1) less (2) as follows:

- (1) the Member's required contributions made to the Prior Plan, plus Interest; and
- (2) 100% of the Commuted Value of the Member's pension.

The Excess Contribution will be paid in accordance with Section 9.8.

9.8 Excess Contribution Payment Options

(a) British Columbia

The Excess Contribution relating to a British Columbia Member is payable to the Member, his Spouse or his Beneficiary, as applicable, in a lump sum unless the Member or his Spouse, as applicable, elects the Excess Contribution be:

- (1) transferred to another registered pension plan, if and to what extent that plan permits the transfer;
- (2) transferred to a prescribed retirement savings arrangement;
- (3) transferred to an insurance company or prescribed savings institution to purchase a deferred pension or other prescribed retirement income fund;
or
- (4) used to increase the amount of the pension if and to the extent that the Plan so provides.

Provided that any transfer shall be in accordance with the Income Tax Act.

(b) Alberta

The Excess Contribution relating to an Alberta Member is payable to the Member, his Spouse or his Beneficiary, as applicable, in a lump sum unless the Member or his Spouse, as applicable, elects the Excess Contribution be:

- (1) used to increase the pension accrued to the Member, as determined by the Actuary;
- (2) transferred to an insurance company to purchase an immediate or deferred life annuity;
- (3) transferred to another registered pension plan, if that plan permits the transfer; or
- (4) transferred to a prescribed retirement savings arrangement.

Provided that any transfer shall be in accordance with the Income Tax Act.

(c) Saskatchewan

The Excess Contribution relating to a Saskatchewan Member will, at the election of the Member, his Spouse or Beneficiary, as applicable be:

- (1) returned to the Member;

- (2) transferred to another registered pension plan if and to the extent that the plan permits the transfer;
- (3) transferred to a prescribed retirement savings arrangement;
- (4) transferred to an insurance company to purchase a deferred pension; or
- (5) used to increase the pension accrued to the Member, if and to the extent that the plan permits the increase.

Provided that any transfer shall be in accordance with the Income Tax Act.

(d) Ontario

The Excess Contribution relating to an Ontario Member will be payable to the Member, his Spouse or Beneficiary, as applicable, in accordance with the Pension Benefits Act and the Income Tax Act.

(e) Quebec

The Excess Contribution relating to a Quebec Member will, at the Member's election, be:

- (1) transferred to another registered pension plan or locked-in retirement account, if the transferee agrees to administer the amount transferred as an annuity contract not capable of commutation and governed by the Supplemental Pension Plans Act of Quebec and its Regulations and provided that the transfer is in accordance with the Income Tax Act; or
- (2) used to increase the pension accrued to the Member, as determined by the Actuary.

Where such Excess Contribution is payable to the Member's Spouse or Beneficiary, it will be paid in a lump sum, or as a transfer to a prescribed retirement savings arrangement in accordance with the Income Tax Act.

(f) New Brunswick

The Excess Contribution relating to a New Brunswick Member is payable to such Member, his Spouse or Beneficiary, as applicable, in a lump sum, or as a transfer to a prescribed retirement savings arrangement in accordance with the Income Tax Act.

The payment of Excess Contributions under this Section 9.8 will only be permitted where required by Applicable Pension Legislation.

9.9 Small Benefit Commutation

Where the annual pension payable on the Member's normal retirement date is not more than such amount as is prescribed under Applicable Pension Legislation, the Employer will pay the Member a lump sum payment equal to the Commuted Value of his pension or deferred pension in full discharge of all obligations under the Plan.

9.10 Maximum Pension Benefit

Notwithstanding anything in the Plan to the contrary, the annual pension provided under the Plan, including benefits payable to a Spouse under Section 15.3, at retirement, death, termination of Continuous Employment or termination of the Plan will not exceed the lesser of:

- (a) \$1,722.22 multiplied by the Member's years of Pensionable Service, excluding that portion of the Member's pre-1992 Pensionable Service in excess of 35 years; and
- (b) 2% of the average of the best 3 consecutive years of Earnings multiplied by the Member's years of Pensionable Service, excluding that portion of the Member's pre-1992 Pensionable Service in excess of 35 years,

or such other maximum pension as permitted under the Income Tax Act, from time to time.

The foregoing does not apply to benefits derived from the minimum benefit with respect to required contributions determined under Section 9.7.

ARTICLE 10 - NORMAL AND OPTIONAL FORMS

10. 10.1 Normal Form of Pension Benefit - No Spouse

For a Member who has no Spouse on the date the Member terminates Continuous Employment the normal form of pension payable under the Plan is an annuity payable in monthly instalments for the life of the Member and, in any event, for a period of not less than 120 months. If the Member dies before receiving 120 payments, his Beneficiary will receive the balance of the remaining payments. At the Beneficiary's election, the Commuted Value of the remaining payments will be paid in a lump sum.

10.2 Normal Form of Pension Benefit - With a Spouse

Subject to Section 10.3, for a Member who has a Spouse on the date pension payments commence, the normal form of pension payable under the Plan is a joint and survivor annuity payable in monthly instalments for the life of the Member. After the Member's death, 50% of such annuity is payable to the Member's Spouse for his life. If, however, the Spouse is more than 10 years younger than the Member, the Spouse's annuity will be reduced by 1% of the Member's annuity for each complete year in excess of 10 years.

10.3 Legislated Form of Pension Benefit

(a) British Columbia, Alberta, Ontario, New Brunswick

Subject to Section 10.3(b), on and after the Applicable Date, for a Member who has a Spouse on the date on which pension payments commence, the legislated form of pension is a joint and survivor annuity which is:

- (1) payable in monthly instalments of a reduced amount while both the Member and the Spouse are alive and payable after the death of either the Member or the Spouse, to the survivor for his life in monthly instalments equal to 60% of the amount of each monthly instalment paid while both the Member and Spouse are alive; and
- (2) the Actuarial Equivalent of a pension in the form described in Section 10.1 or 10.2, whichever is greater.

(b) Saskatchewan and Quebec

On and after July 1, 1981, for a Saskatchewan Member who has a Spouse on the date on which pension payments commence, the legislated form of pension is a joint and survivor annuity which is:

- (1) payable in monthly instalments of a reduced amount for the life of the Member and payable, after the Member's death, to the Member's Spouse for his life in monthly instalments equal to 60% of the amount of each monthly instalment paid during the life of the Member; and
- (2) the Actuarial Equivalent of a pension in the form described in Section 10.1.

or 10.2, as applicable.

10.4 Waiver of Spousal Joint and Survivor Pension

A Member may elect to receive a pension in a form that provides for less monthly payments to continue to the Spouse than the legislated amount specified in Section 10.3, if:

- (a) the Member delivers to the Pension and Benefits Committee, within the time periods prescribed under Applicable Pension Legislation, the written waiver of the Spouse (and the Member, if required by Applicable Pension Legislation); and
- (b) this waiver is not revoked before the commencement of the Member's pension.

10.5 Termination of Right of Quebec Member's Spouse

The right of a Quebec Member's Spouse to a benefit under Section 10.2 or 10.3 is terminated by separation from bed and board, divorce or annulment of marriage or cessation of conjugal relationship, except where:

- (a) partition of the Member's benefits under Section 15.3 was not effected; and
- (b) the Quebec Member notified the Pension and Benefits Committee, in writing, to make payment of the pension to the Spouse despite such dissolution of marriage or separation.

10.6 Optional Forms Available

Subject to Section 10.4, and in lieu of the normal form of pension described in Section 10.1 and 10.2 (or the legislated form of pension payable under Section 10.3), a Member may elect, before pension payments commence, one of the following optional forms of pension.

The form of payment elected will be the Actuarial Equivalent of the normal form of pension described in Section 10.1 or 10.2 as applicable.

(1) Life Only

Under the life only option, the Member will receive a monthly pension payable for life.

(2) Joint and Last Survivor

Under the joint and last survivor option, the Member receives an adjusted monthly pension payable for life and, after the Member's death, 75% or 100%, as elected by the Member, of the monthly pension will continue to the Member's Spouse for life.

For pensions commencing on or after January 1, 1992, the Member may only designate a Spouse or former Spouse as a joint annuitant.

(3) Level Income Option

Under the level income option, the Member receives increased amounts of monthly pension until age 65 and a reduced pension thereafter, in order to provide a level pension income from all sources throughout retirement.

(4) Life With a Guarantee

Under the life with a guarantee option, the Member receives a monthly pension payable for life and, in any event, for a period of not less than 5 or 15 years. If the Member dies before receiving 60 or 180 payments, as applicable, the Member's Beneficiary will receive the value of the remaining payments in a lump sum. The maximum guarantee period permitted under this option is 15 years.

ARTICLE 11 - TERMINATION OF EMPLOYMENT**11. 11.1 Vested Status****(a) British Columbia, Alberta, New Brunswick**

If a British Columbia Member, an Alberta Member or a New Brunswick Member terminates Continuous Employment for any reason other than retirement or death, the benefits accrued to him will vest upon 5 years of Continuous Employment.

(b) Saskatchewan

If a Saskatchewan Member terminates Continuous Employment for any reason other than retirement or death on or after July 1, 1981,

- (1) the benefits accrued to him before January 1, 1994 will vest upon the completion of both
 - (A) 1 year of Continuous Employment (or membership in the Plan and Prior Plan); and
 - (B) the sum of his age and Continuous Employment (or membership in the Plan and Prior Plan) equal 45 or more;
- (2) benefits accrued to him on and after January 1, 1994 (or otherwise granted by an amendment to the Plan on and after January 1, 1994 in respect of Pensionable Service before January 1, 1994) will vest upon 2 years of Continuous Employment.

(c) Ontario

If an Ontario Member terminates Continuous Employment for any reason other than death on or after January 1, 1988,

- (1) the benefits accrued to him before January 1, 1987 will vest upon completion of 5 years of Continuous Employment; and
- (2) benefits accrued to him on and after January 1, 1987 (or otherwise granted by an amendment made to the Plan on and after January 1, 1988 in respect of Pensionable Service before January 1, 1987) will vest upon the completion of 2 years of membership in the Plan and Prior Plan.

(d) Quebec

If a Quebec Member terminates Continuous Employment for any reason other than death on or after January 1, 1990,

- (1) the benefits accrued to him before January 1, 1990 will vest upon completion of 5 years of Continuous Employment;
- (2) benefits accrued to him on and after January 1, 1990 (or otherwise granted by an amendment made to the Plan on and after January 1, 1990 in respect of Pensionable Service before January 1, 1990) will vest upon the completion of 2 years of membership in the Plan and Prior Plan.

11.2 Locked-In Status(a) British Columbia

If a British Columbia Member terminates Continuous Employment for any reason other than retirement or death on or after January 1, 1993,

- (1) the benefits accrued to him before January 1, 1993, will vest if the Member has both completed 10 years of Continuous Employment (or membership in the Plan and Prior Plan) and attained age 45;
- (2) benefits accrued to him on and after January 1, 1993 (or otherwise granted by an amendment made to the Plan on and after January 1, 1993 in respect of Pensionable Service before January 1, 1993) will vest upon the completion of 5 years of Continuous Employment.

(b) Alberta

If an Alberta Member terminates Continuous Employment for any reason other than death on or after January 1, 1987,

- (1) the benefits accrued to him before January 1, 1987 will be locked-in if the Member has both completed 10 years of Continuous Employment (or membership in the Plan and Prior Plan) and attained age 45; and
- (2) benefits accrued to him on and after January 1, 1987 (or otherwise granted by an amendment made to the Plan on and after January 1, 1987 in respect of Pensionable Service before January 1, 1987) will be locked-in, if the Member has completed 5 years of Continuous Employment.

(c) Saskatchewan

If a Saskatchewan Member terminates Continuous Employment for any reason other than death on or after July 1, 1981,

- (1) benefits accrued to him before January 1, 1994 will be locked in upon the completion of both:
 - (A) 1 year of Continuous Employment (or membership in the Plan and Prior Plan); and
 - (B) the sum of his age and Continuous Employment (or membership in the Plan and Prior Plan) equal 45 or more.
- (2) benefits accrued to him on and after January 1, 1994 will be locked-in upon the completion of 2 years of Continuous Employment.

(d) Ontario

If an Ontario Member terminates Continuous Employment for any reason other than death on or after January 1, 1988,

- (1) the benefits accrued to him before January 1, 1987 will be locked-in, if the Member has both completed 10 years of Continuous Employment (or membership in the Plan and Prior Plan) and attained age 45; and
- (2) the benefits accrued to him on and after January 1, 1987 (or otherwise granted by an amendment made to the Plan on and after January 1, 1987 in respect of Pensionable Service before January 1, 1987) will be locked-in, if the Member has completed 2 years of membership in the Plan and Prior Plan.

(e) Quebec

If a Quebec Member terminates Continuous Employment for any reason other than death on or after January 1, 1990,

- (1) the benefits accrued to him before January 1, 1990 will be locked-in, if the Member has both completed 10 years of Continuous Employment (or membership in the Plan and Prior Plan) and attained age 45, and
- (2) benefits accrued to him on and after January 1, 1990 (or otherwise granted by an amendment made to the Plan on and after January 1, 1990 in respect of Pensionable Service before January 1, 1990) will be locked-in, if the Member has completed 2 years of membership in the Plan and Prior Plan.

(f) New Brunswick

If a New Brunswick Member terminates Continuous Employment for any reason other than death, and at such termination, the Member is not eligible to retire under Article 8, benefits accrued to him will be locked-in, if the Member has completed 5 years of Continuous Employment.

11.3 Termination: Not Vested

If a Member's Continuous Employment terminates for any reason other than retirement or death and the Member is not vested under Section 11.1 in all of his benefits, the Member will receive a lump sum refund equal to his required contributions to the Prior Plan, plus Interest, which relate to that period of Pensionable Service in which he is not vested.

11.4 Termination: Vested But Not Locked-In

Subject to Section 11.5, if a Member's Continuous Employment terminates for any reason other than death, and the Member is vested under Section 11.1 in any portion of his benefits but not locked-in, the Member may elect either:

- (a) a lump sum refund equal to his required contributions made to the Prior Plan, plus Interest; or
- (b) a deferred pension, commencing on his normal retirement date, calculated according to the formula in Section 9.1,

which relate to that period of Pensionable Service in which he is vested.

11.5 Termination: Vested And Locked-In

Subject to Section 11.6, if a Member's Continuous Employment terminates for any reason other than death, and the Member is locked-in under Section 11.2 with respect to any of his benefits, the Member is not permitted to withdraw his required contributions made to the Prior Plan relating to the period of Pensionable Service in which he is locked-in. In lieu thereof, the Member will receive a deferred pension, commencing on his normal retirement date (or if applicable, his postponed retirement date), calculated according to the formula in Section 9.1.

11.6 Partial Commutation: 25%

(a) British Columbia

If, upon a British Columbia Member's termination of Continuous Employment for any reason other than death, the Member is locked-in under Section 11.2(a), such Member may receive, in partial discharge of his rights under Section 11.5, 25% of the Commuted Value of the deferred pension. If this lump sum payment is made, the remaining benefits payable to the Member will be adjusted on an Actuarial Equivalent basis.

(b) Alberta

If, upon an Alberta Member's termination of Continuous Employment for any reason other than death, the Member is locked-in under Section 11.2(b)(1), such Member may receive, in partial discharge of his rights under Section 11.5, 25% of the Commuted Value of the deferred pension accrued before January 1, 1987.

If this lump sum payment is made, the remaining benefits payable to the Member will be adjusted on an Actuarial Equivalent basis.

(c) Saskatchewan

If, upon a Saskatchewan Member's termination of Continuous Employment for any reason other than death, the Member is locked-in under Section 11.2(c), such Member may receive, in partial discharge of his rights under Section 11.5, a lump sum payment not exceeding 50% of the sum of his required contributions made to the Prior Plan prior to January 1, 1994, plus Interest.

(d) Ontario

If, upon an Ontario Member's termination of Continuous Employment for any reason other than death, the Member is locked-in under Section 11.2(d)(1), such Member may receive, in partial discharge of his rights under Section 11.5, 25% of the Commuted Value of the deferred pension accrued before January 1, 1987.

If this lump sum payment is made, the remaining benefits payable to the Member will be adjusted on an Actuarial Equivalent basis.

(e) Quebec

If, upon a Quebec Member's termination of Continuous Employment for any reason other than death, the Member is locked-in under Section 11.2(e)(1), such Member is not permitted to receive any lump sum payment in lieu of his benefit entitlement except as provided in Section 11.9.

11.7 Early Commencement of Deferred Pension

A Member who terminates Continuous Employment before attaining age 55 and who is entitled to receive a deferred pension under this Article 11 may elect to commence receiving this pension on the first day of any month on or following the attainment of age 55 up to his normal retirement date. The Member's pension will be reduced by 0.4% for each month by which the Member's pension commencement date precedes his normal retirement date.

11.8 Portability

- (a) A Member who terminates Continuous Employment or ceases to be a Member of the Plan may elect to have the Commuted Value of the deferred pension to which the Member is entitled under this Article 11, plus Interest:
- (1) transferred to another pension plan, if the administrator of that pension plan agrees to accept the transfer;
 - (2) transferred to a prescribed retirement savings arrangement, as prescribed in Applicable Pension Legislation; or
 - (3) applied to purchase a deferred life annuity from an insurance company licensed to transact business in Canada, provided payment of the annuity will not commence before the earliest date on which the Member was entitled to retire under the Plan.
- (b) The Employer will not permit a transfer or purchase under Section 11.8(a) unless the Employer is satisfied that the transfer or purchase is in accordance with Applicable Pension Legislation and that any restrictions in Applicable Pension Legislation, with regard to the solvency of the Plan, have been met.
- (c) After December 31, 1990, if the Commuted Value of a Member's pension exceeds such maximum amount prescribed under the Income Tax Act, the amount transferred in accordance with Section 11.8(a) will not exceed the prescribed maximum amount and the excess of the Commuted Value, plus Interest, over the amount transferred will be paid to the Member in a lump sum, unless the Member is in Ontario in which case the amount must be transferred to a Registered Retirement Savings Plan or a Registered Retirement Income Fund.
- (d) A Member who is entitled to a refund of contributions under this Article 11 may elect to transfer the refunded amount to a prescribed retirement savings arrangement.

Upon such a transfer or purchase, the Member will cease to be a Member and will have no further entitlement under the Plan.

11.9 Small Benefit Commutation

If the Member's Continuous Employment terminates and the annual pension payable on the Member's normal retirement date is not more than such amount as is prescribed under Applicable Pension Legislation, the Employer will pay the Member a lump sum payment equal to the Commuted Value of his pension or deferred pension in full discharge of all obligations under the Plan.

11.10 Excess Contributions

In addition to any other termination benefits payable under this Article 11, a Member whose Continuous Employment is terminated for any reason other than death or retirement will receive his Excess Contributions, calculated in accordance with Section 9.7, and payable in accordance with Section 9.8.

ARTICLE 12- DESIGNATION OF BENEFICIARY AND DEATH BENEFITS**12.1 Beneficiary Designation**

Subject to Sections 12.4 and 12.5, a Member may designate, by written notice delivered to the Pension and Benefits Committee, a Beneficiary to receive any benefits payable on the death of the Member. A Member may revoke or amend such designation in the same manner at any time, subject to any applicable laws governing the designation of beneficiaries.

12.2 No Beneficiary

Subject to Sections 12.4 and 12.5, if a Member fails to validly designate a Beneficiary, or if the Beneficiary predeceases the Member, any benefits payable to the Member's Beneficiary will be paid in a lump sum to the estate of the Member.

12.3 Death of Beneficiary

Subject to Sections 12.4 and 12.5, if a Beneficiary, as a result of a Member's death, is entitled to payments under the Plan and the Beneficiary dies before receiving any or all of the payments due to him, the Commuted Value of the remainder of the payments will be paid in a lump sum to the estate of the Beneficiary.

12.4 Death Before Pension Commencement - Before Normal Retirement Date**(a) Without a Spouse****(1) British Columbia, Alberta and Saskatchewan**

If a British Columbia Member, Alberta Member or Saskatchewan Member dies before pension payments have commenced under the Plan and before the Member's normal retirement date and, at the date of his death, the Member has no surviving Spouse, a death benefit is payable to the Member's Beneficiary equal to the Member's required contributions made to the Prior Plan, plus Interest.

(2) Ontario

If an Ontario Member dies before pension payments have commenced under the Plan and before the Member's normal retirement date and, at the date of his death, the Member has no surviving Spouse, a death benefit equal to (A) plus (B) or (C) as follows:

- (A) the Member's required contributions made to the Prior Plan before January 1, 1987, plus Interest, is payable to the Member's Beneficiary; plus

- (B) the Member's required contributions made to the Prior Plan on and after January 1, 1987, plus Interest, is payable to the Member's Beneficiary, if the Member was not vested in accordance with Section 11.1 at the date of his death; or
- (C) the Commuted Value of the pension accrued to the Member in respect of Pensionable Service on and after January 1, 1987 (or otherwise granted by an amendment made to the Plan on and after January 1, 1987, in respect of Pensionable Service before January 1, 1987) is payable to the Member's Beneficiary, if the Member was vested in accordance with Section 11.1 at the date of his death.

(3) Quebec

If a Quebec member dies before pension payments have commenced under the Plan and before the Member's normal retirement date and, at the date of his death, the Member has no surviving Spouse, a death benefit equal to (A) plus (B) or (C) as follows:

- (A) the Member's required contributions made to the Prior Plan before January 1, 1990, plus Interest, is payable to the Member's Beneficiary; plus
- (B) the Member's required contributions made to the Prior Plan on and after January 1, 1990, plus Interest, is payable to the Member's Beneficiary, if the Member was not vested in accordance with Section 11.1 at the date of this death; or
- (C) the Commuted Value of the pension accrued to the Member in respect of Pensionable Service on and after January 1, 1990 (or otherwise granted by an amendment made to the Plan on and after January 1, 1990 in respect of Pensionable Service before January 1, 1990), is payable to the Member's Beneficiary, if the Member was vested in accordance with Section 11.1 at the date of this death.

(4) New Brunswick

If a New Brunswick Member dies before pension payments have commenced under the Plan and before the Member's normal retirement date and, at the date of his death, the Member has no surviving Spouse, a death benefit equal to (A) plus (B) as follows:

- (A) the Member's required contributions made to the Prior Plan, plus Interest, is payable to the Member's Beneficiary, if the Member was not vested in accordance with Section 11.1 at the date of his death; or
- (B) the greater of:

- (i) 60% of the Commuted Value of the pension accrued to the Member in respect of Pensionable Service; and
- (ii) the Member's required contributions made to the Prior Plan, plus Interest,

is payable to the Member's Beneficiary, if the Member was vested in accordance with Section 11.1 at the date of his death.

(b) With a Spouse

(1) British Columbia

If a British Columbia Member or former Member dies before pension payments have commenced under the Plan and before his normal retirement date and, at the date of his death, the Member has a Spouse, a death benefit is payable to the Spouse equal to A plus B as follows:

- (A) the value of the deceased's contributions to the Prior Plan made before January 1, 1993, plus Interest, and
- (B) the greater of (i) or (ii) as follows:
 - (i) the deceased's contributions to the Prior Plan made on and after January 1, 1993, plus Interest and
 - (ii) 60% of the Commuted Value of the pension accrued to the Member in respect of Pensionable Service on and after January 1, 1993, (or the pension in respect to the deceased's membership on and after January 1, 1993, if the Plan has been terminated).

(2) Alberta

If an Alberta Member dies before pension payments have commenced under the Plan and before his normal retirement date and, at the date of his death, the Member has a Spouse, a death benefit is payable to the Spouse equal to (A) plus (B) as follows:

- (A) the Member's required contributions made to the Prior Plan before January, 1987, plus Interest; plus
- (B) the greater of (i) or (ii) as follows:
 - (i) the Member's required contributions made to the Prior Plan on and after January 1, 1987, plus Interest; and
 - (ii) 60% of the Commuted Value of the benefit accrued to the

Member in respect of Pensionable Service on and after January 1, 1987 (or otherwise granted to him by an amendment made to the Plan on and after January 1, 1987, in respect of Pensionable Service before January 1, 1987).

(3) Saskatchewan

If a Saskatchewan Member dies before pension payments have commenced under the Plan and before the Member's normal retirement date and, at the date of his death the Member has a Spouse, a death benefit equal to the greater of (A) or (B) as follows:

- (A) the Member's required contributions made to the Prior Plan plus Interest; and
- (B) 100% of the Commuted Value of the benefit accrued to the Member.

(4) Ontario

If an Ontario Member dies before pension payments have commenced under the Plan and before the Member's normal retirement date and, at the date of his death, the Member has a Spouse, a death benefit equal to (A) plus (B) or (C) as follows:

- (A) the Member's required contributions made to the Prior Plan before January 1, 1987, plus Interest is payable to the Member's Spouse; plus
- (B) the Member's required contributions made to the Prior Plan on and after January 1, 1987, plus Interest, is payable to the Member's Spouse, if the Member was not vested in accordance with Section 11.1 at the date of his death; or
- (C) the Commuted Value of the benefit accrued to the Member in respect of Pensionable Service on and after January 1, 1987 (or otherwise granted to him by an amendment made to the Plan on and after January 1, 1987, in respect of Pensionable Service before January 1, 1987) is payable to the Member's Spouse, if the Member is vested in accordance with Section 11.1 at the date of his death.

(5) Quebec

If a Quebec Member dies before pension payments have commenced under the Plan and before the Member's normal retirement date and, at the date of his death, the Member has a Spouse, a death benefit equal to (A) plus (B) or (C) as follows:

- (A) the Member's required contributions made to the Prior Plan before January, 1990, plus Interest, is payable to the Member's Beneficiary; plus
- (B) the Member's required contributions made to the Prior Plan on and after January 1, 1990, plus Interest, is payable to the Member's Beneficiary, if the Member was not vested in accordance with Section 11.1 at the date of his death; or
- (C) the Commuted Value of the benefit accrued to the Member in respect of Pensionable Service on and after January 1, 1990 (or otherwise granted to him by an amendment made to the Plan on and after January 1, 1990, in respect of Pensionable Service before January 1, 1990) is payable to the Member's Spouse, if the Member is vested in accordance with Section 11.1 at the date of his death.

(6) New Brunswick

If a New Brunswick Member dies before pension payments have commenced under the Plan and before his normal retirement date and, at the date of his death, the Member has a Spouse, a death benefit equal to the greater of (A) or (B) as follows:

- (A) the Member's required contributions made to the Prior Plan, plus Interest; and
- (B) 60% of the Commuted Value of the benefit accrued to the Member,

is payable to the Member's Spouse, if the Member is vested in accordance with Section 11.1 at the date of his death.

12.5 Death Before Pension Commencement - After Normal Retirement Date

(a) British Columbia, Alberta, Saskatchewan, Ontario, New Brunswick

If a British Columbia Member, an Alberta Member, a Saskatchewan Member, an Ontario Member or a New Brunswick Member dies before pension payments have commenced while in Continuous Employment and after his normal retirement date, the value of any death benefit payable under this Article 12 will not be less than the benefit that would have been payable had the Member retired the day before his death.

(b) Quebec

If a Quebec Member dies before pension payments have commenced while in Continuous Employment and after his normal retirement date, the value of any death benefit payable under this Article 12 will not be less than the greater of (1) or (2) as follows:

(1) the benefit that would have been payable under Section 10.1, 10.2, or 10.3(a), as applicable, had the Member retired the day before his death; or

(2) either (A) or (B) as follows:

(A) the benefit determined in accordance with Section 12.4, if the Member has no surviving Spouse at the date of his death; and

(B) (i) plus (ii) as follows:

(i) the Member's required contributions made to the Prior Plan before January 1, 1990, plus Interest; plus

(ii) the benefit accrued to the Member in respect of Pensionable Service on and after January 1, 1990 (or otherwise granted to the Member by an amendment to the Plan made on or after January 1, 1990, with respect to Pensionable Service before January 1, 1990) up to his normal retirement date plus the Member's required contributions made to the Prior Plan on and after January 1, 1990, and on and after his normal retirement date, plus Interest, if the Member has a Spouse at the date of his death.

12.6 Settlement Option

(a) British Columbia, Alberta, Saskatchewan

If the Spouse of a British Columbia Member, a Saskatchewan Member or an Alberta Member is entitled to benefits under Section 12.4 or 12.5, the Spouse may elect to receive such benefits as an annuity payable for the Spouse's lifetime commencing either immediately or before the Spouse's 71st birthday or, if later, within one year after the death of the Member. The annuity may be guaranteed for a period not exceeding 15 years. Notwithstanding the foregoing, with effect from January 1, 1997, the words "Spouse's 71st birthday" in this Section 12.6(a) shall read as "Spouse's 69th birthday or such other time as is acceptable under the Income Tax Act".

Benefits payable to the Member's Beneficiary under Section 12.4 or 12.5 are payable in a lump sum.

(b) Ontario, Quebec, New Brunswick

If the Spouse of an Ontario, a Quebec or a New Brunswick Member is entitled to benefits under Section 12.4 or 12.5, the Spouse may elect to receive such benefits:

- (1) as a lump sum; or
- (2) as an annuity payable for the Spouse's lifetime commencing either immediately or before the Spouse's 71st birthday or, if later, within one year after the death of the Member. The annuity may be guaranteed for a period not exceeding 15 years. Notwithstanding the foregoing, with effect from January 1, 1997, the words "Spouse's 71st birthday" in this Section 12.6(b)(2) shall be read as "Spouse's 69th birthday or such other time as is acceptable under the Income Tax Act".

If the Spouse does not make an election under this Section 12.6(b) within 90 days of being advised on the entitlement under this Section, the Spouse will be deemed to have elected the immediate annuity described in Section 12.6(b)(2).

Benefits payable to the Member's Beneficiary under Section 12.4 or 12.5 are payable in a lump sum.

12.7 Spousal Waivers

A Member and his Spouse may waive the Spouse's entitlements under this Article 12 in the manner and in the form prescribed by Applicable Pension Legislation.

12.8 Death after Pension Commencement

Any death benefit payable on the death of a Member who has commenced to receive his pension is determined in accordance with the form of the pension being paid to the Member under Article 10.

12.9 Excess Contributions

In addition to any other death benefits payable under this Article 12, a Member who dies prior to receiving a benefit in respect of his Excess Contributions will have such contributions, calculated in accordance with Section 9.7, and payable in accordance with Section 9.8.

ARTICLE 13 - ADMINISTRATION

13. 13.1 Administration

The administrator of the Plan will be the Company. The Management Committee of the Board of Directors of the Company will appoint a Pension and Benefits Committee to act on behalf of the Company in its capacity as administrator of the Plan. The Pension and Benefits Committee will decide conclusively all matters relating to the operation, interpretation and application of the Plan.

13.2 Duties of the Pension and Benefits Committee

The Pension and Benefits Committee will:

- (a) be responsible for the performance of all administrative functions not performed by the Funding Agent, the Actuary or any group annuity contract issuer;
- (b) enact rules and regulations relevant to the operation of the Plan and amend or revoke such rules and regulations from time to time;
- (c) recommend amendments to the Plan;
- (d) interpret the terms and provisions of the Plan and determine any and all questions arising thereunder or in connection with the administration thereof, including the right to remedy possible ambiguities, inconsistencies or omissions, and in so doing, it will act in a way such as not to discriminate unfairly in favour of any Employee or Member;
- (e) appoint an agent who will:
 - (1) maintain, or cause to be maintained, records of the Members;
 - (2) maintain such data as may be required for the actuarial valuation of the liabilities of the Plan; and
 - (3) decide all questions relating to service, eligibility, membership, early retirement, pension benefits and the amount of any Employee's Earnings for the purpose of the Plan.

13.3 Employee Disclosure

The Pension and Benefits Committee will provide each Member with a written explanation of the terms and conditions of the Plan and amendments thereto applicable to him, together with an explanation of the rights and duties of the Member with reference to the benefits available to him under the terms of the Plan. The Pension and Benefits Committee will also provide the Member, Employee, Spouse or any other authorized individual with such other information as may be prescribed under Applicable Pension Legislation.

A copy of the Funding Agreement and other documents prescribed under Applicable Pension Legislation may be examined by any Member of the Plan (or by any other individual with an interest in the Plan that is recognized under Applicable Pension Legislation) at any reasonable time at the head office of the Employer or such other location as may be prescribed under Applicable Pension Legislation.

13.4 Indemnification of Delegates

If the Employer delegates all or some of its powers of administration to an employee or employees, the Management Committee and the Pension and Benefits Committee ("Delegates"), the Employer will defend, save harmless and fully indemnify such Delegates, their heirs, executors, administrators, successors and legal representatives, at all times from and against all claims and demands of every nature and kind and all proceedings in respect thereof which may be made or brought against them, or any one of them, by any Member for himself, his Spouse, his heirs, executors, administrators and beneficiaries. This indemnification includes all costs, disbursements, legal fees and all other expenses reasonably incurred or occasioned in connection therewith, save and except for any claims, demands and proceedings arising from any act or omission which is due to wilful misconduct, fraud or lack of good faith by the Delegates, or any one of them.

ARTICLE 14 - RIGHT TO AMEND OR TERMINATE THE PLAN

14.1 Continuation of the Plan

The Employer intends to maintain the Plan indefinitely but reserves the right to amend or discontinue the Plan either in whole or in part at any time.

14.2 Amendment to the Plan

- (a) No amendment will operate to reduce the pension benefits which have accrued to any Member before the date of such amendment based on Earnings at that date.
- (b) Where an amendment results in a certifiable past service pension adjustment (as defined under the Income Tax Act) in respect of a Member, the amendment will not apply to such Member before certification of the past service pension adjustment in accordance with the Income Tax Act.

14.3 Termination of the Plan

- (a) If the Plan is wound up, in whole or in part, the assets of the Fund will first be allocated for provision of benefits in accordance with the terms of the Plan, Applicable Pension Legislation, the Income Tax Act and any other applicable legislation.
- (b) If the Plan is wound up, in whole or in part, the Employer will not make further contributions to the Fund in respect of the Plan or the portion of the Plan being wound up, as applicable, except for amounts due or that have accrued up to the effective date of the wind-up and which have not been paid into the Fund, as required by the Plan and Applicable Pension Legislation.
- (c) Subject to the application of the Pension Benefits Guarantee Fund (Ontario), if the Plan is wound up, in whole or in part, and the assets in the Fund are not sufficient to pay all the benefits under the Plan or the portion of the Plan being wound up, as applicable, the benefits payable will be reduced in the manner prescribed by Applicable Pension Legislation.

14.4 Wind-Up Surplus

If after provision for benefits payable to or in respect of Members on the wind-up, in whole or in part, of the Plan, assets remain in the Fund or the part of the Fund affected by the partial wind-up, such assets will be refunded to the Employer, provided the Employer complies with the requirements of Applicable Pension Legislation and the Income Tax Act.

ARTICLE 15 - GENERAL PROVISIONS

15. 15.1 Right to Employment

Nothing contained in the Plan will confer upon any Member or Employee the right to be retained in the Continuous Employment of the Employer nor will it interfere in any manner with the right of the Employer to discharge any person.

15.2 Non Alienation of Benefits

Except as specified in Section 15.3, money payable under the Plan is subject to the following restrictions:

(a) Void Transactions

any transaction that purports to assign, charge, anticipate, surrender or give as security money payable under the Plan is void; and

(b) Exemption From Seizure

money payable under the Plan is exempt from execution, seizure or attachment.

15.3 Marital Breakdown

(a) Support Obligations

Payments under the Plan are subject to execution, seizure or attachment in satisfaction of a decree, order or judgement of a competent tribunal (or written domestic contract) for support or maintenance enforceable in Ontario or another relevant jurisdiction, in accordance with Applicable Pension Legislation and the Income Tax Act.

(b) Division of Property

The benefits of a Member may be partitioned between the Member and his Spouse or former Spouse, in accordance with a decree, order or judgement of a competent tribunal (or written domestic contract), within the limits imposed by Applicable Pension Legislation and the Income Tax Act.

(c) Where all or part of a Member's pension or other benefits are distributed to a Spouse or former Spouse, the Commuted Value of a Member's pension or other benefits payable to the Member and Spouse or former Spouse after the distribution, will not exceed the Commuted Value of the pension and other benefits that would have been payable in respect of the Member, had the distribution not occurred.

15.4 Non-Commutation of Pensions

A pension or deferred pension payable under this Plan will not be capable of being commuted, except as follows:

- (a) as permitted under Section 9.9;
- (b) as permitted under Section 11.6;
- (c) as permitted under Section 11.9; or
- (d) as permitted in accordance with Applicable Pension Legislation, in the event that the life expectancy of the Member is likely to be considerably shortened by reason of his mental or physical disability.

15.5 Information to be Provided Before Employer Pays Benefits

Payment of benefits will not be made until the person entitled to payment of the benefit delivers to the Employer:

- (a) satisfactory proof of age of the person and other persons who may become entitled to payment of the pension and such other information as may be required to calculate and pay the benefit; and
- (b) if the benefit is payable to a Member or Spouse, a signed declaration of marital status.

15.6 Payment to Minors and Physically or Mentally Handicapped

If, when a benefit becomes payable, the Employer finds that the person entitled to receive the benefit under the Plan is a minor, or is otherwise incapable of giving a valid receipt and release thereof, the payment may be made to:

- (1) the guardian, committee or other legal representative of the person; or
- (2) a court or authorized government agency of the jurisdiction to which the pension is subject, for the credit of the person, in accordance with the laws of the jurisdiction governing such payment.

Any such payment will operate as a complete discharge of liability under this Plan.

15.7 Service in More than One Province

If the Member has been in Continuous Employment in more than one province, the Member's benefit payable under the Plan on his retirement in respect of all years of Pensionable Service will be determined in accordance with the provisions of the most generous Applicable Pension Legislation in force in any of the provinces in which he has Continuous Employment.

15.8 Currency

All contributions to the Plan and all benefits payable from the Plan will be made in lawful Canadian currency, provided that in case of any Member being paid his Earnings with some other currency, the Company may, from time to time in its discretion, fix the rate of exchange to be used for the purpose of the Plan in converting to Canadian currency his Earnings and benefits under the Plan.

15.9 Severability

If any provision of the Plan is held to be invalid or unenforceable by a court of competent jurisdiction, its invalidity or unenforceability will not affect any other provision of the Plan and the Plan will be construed and enforced as if such provision had not been included in the Plan.

15.10 Construction

The Plan will be governed and construed in accordance with the laws of Ontario. Any provision of the Funding Agreement that is inconsistent with the terms of the Plan will, to the extent of the inconsistency, be of no force or effect.

APPENDIX A1. Additional Annual Retirement Income

Each Member and each Spouse in receipt of a retirement income in accordance with the applicable provisions of Articles 9 and 10 of the Plan will be entitled to an additional annual retirement income to the extent set out below.

2. Manner Payable

The additional annual retirement income will be payable in the same manner and form as the retirement income otherwise being paid.

3. Additional Annual Retirement Income Effective January 1, 1987

The additional annual retirement income payable to a Member or the Spouse of a deceased Member whose retirement income commenced prior to January 1, 1987 will be the product of:

(a) the annual amount of retirement income otherwise being paid as at December 31, 1986; and

(b) a percentage addition determined as follows:

<u>YEAR OF COMMENCEMENT OF RETIREMENT INCOME</u>	<u>PERCENTAGE ADDITION</u>
1983 and earlier	7.15%
1984	5.85%
1985	3.35%
1986	1.00%

In the event the Member was under 60 years of age on January 1, 1987, the additional retirement income will not commence until his 60th birthday, unless the Member had retired on account of inability to continue employment due to Total Disability or failure to keep up with technological advancement. For the purposes of this paragraph 3, "Total Disability" means Total Disability as defined in Section 2.37(a) and (b).

4. Additional Annual Retirement Income effective January 1, 1991

The additional annual retirement income payable to a Member or the Spouse of a deceased Member whose retirement income commenced prior to January 1, 1991 will be the product of:

(a) the annual amount of retirement income otherwise being paid as at December 31, 1990; and

(b) a percentage addition determined as follows:

<u>YEAR OF COMMENCEMENT OF RETIREMENT INCOME</u>	<u>PERCENTAGE ADDITION</u>
1986 and earlier	10.01%
1987	8.57%
1988	6.37%
1989	3.50%
1990	1.30%

In the event the Member is under 60 years of age on January 1, 1991, the additional retirement income will not commence until his 60th birthday, unless the Member had retired on account of inability to continue employment due to Total Disability or failure to keep up with technological advancement. For the purposes of this paragraph 4, "Total Disability" means Total Disability as defined in Section 2.37(a) and (b).

5. Limitation

The additional retirement income payable at and after age 60 under this Appendix A, will be warranted by increases in the Consumer Price Index.

APPENDIX B

SUBSIDIARY OR AFFILIATED COMPANIES

PARTICIPATING IN THE PLAN

Caradon Limited
Indal Technologies Inc.
Caradon Lock-Wood, a division of Caradon Limited
Brampton Foundries Ltd.

TABLE OF CONTENTS

	Page
ARTICLE 1 - HISTORY, PURPOSE AND INTERPRETATION	1
ARTICLE 2 - DEFINITIONS	3
ARTICLE 3 - ELIGIBILITY AND MEMBERSHIP	10
3.1 Existing Members	10
3.2 New Members	10
3.3 Membership	10
3.4 Cessation of Plan Membership	10
3.5 Re-employment of Former Employees.....	10
ARTICLE 4 - CONTRIBUTIONS TO THE PLAN	12
4.1 Member Required Contributions	12
4.2 Member Required Contributions under the Prior Plan	12
4.3 Employer Contributions.....	12
4.4 Overpayment.....	12
4.5 Remittance of Contributions to the Fund.....	13
ARTICLE 5 - ACCRUAL DURING SPECIAL LEAVE OF ABSENCE	14
5.1 Meaning of Special Leave of Absence	14
5.2 Plan Membership and Pensionable Service During Leave Period	14
5.3 Earnings During Special Leave of Absence	15
5.4 Leave Ending Before Normal Retirement Date.....	15
5.5 Leave Continuing Until Normal Retirement Date.....	15
5.6 Death During Leave Period	15
ARTICLE 6 - MANAGEMENT OF THE FUND	16
6.1 Administration of the Fund.....	16
6.2 Investment of the Fund	16
6.3 Expenses	16
6.4 Withdrawal of Assets from an Ongoing Plan	16
ARTICLE 7 - TRANSFER OF EMPLOYEES	17
7.1 Transfer to the Plan.....	17
7.2 Transfer Out of the Plan.....	17


ARTICLE 8 - RETIREMENT DATE	18
8.1 Normal Retirement Date.....	18
8.2 Early Retirement Date	18
8.3 Special Early Retirement Date.....	18
8.4 Unreduced Early Retirement Date.....	18
8.5 Postponed Retirement Date	19
ARTICLE 9 - AMOUNT OF PENSION BENEFIT	20
9.1 Normal Retirement Pension.....	20
9.2 Early Retirement Pension	20
9.3 Special Early Retirement Pension.....	21
9.4 Unreduced Early Retirement Pension.....	21
9.5 Postponed Pension Benefit	21
9.6 Postponed Pension Benefit - Quebec Members.....	21
9.7 Minimum Benefit With Respect to Required Contributions	22
9.8 Excess Contribution Payment Options	25
9.9 Small Benefit Commutation	27
9.10 Maximum Pension Benefit	27
ARTICLE 10 - NORMAL AND OPTIONAL FORMS	28
10.1 Normal Form of Pension Benefit - No Spouse	28
10.2 Normal Form of Pension Benefit - With a Spouse	28
10.3 Legislated Form of Pension Benefit	28
10.4 Waiver of Spousal Joint and Survivor Pension	29
10.5 Termination of Right of Quebec Member's Spouse.....	29
10.6 Optional Forms Available.....	29
ARTICLE 11 - TERMINATION OF EMPLOYMENT	31
11.1 Vested Status.....	31
11.2 Locked-In Status	32
11.3 Termination: Not Vested 35	34
11.4 Termination: Vested But Not Locked-In	34
11.5 Termination: Vested And Locked-In.....	34
11.6 Partial Commutation: 25%.....	34
11.7 Early Commencement of Deferred Pension	35
11.8 Portability.....	36
11.9 Small Benefit Commutation	36
11.10 Small Benefit Commutation	37

ARTICLE 12- DESIGNATION OF BENEFICIARY AND DEATH BENEFITS	38
12.1 Beneficiary Designation	38
12.2 No Beneficiary	38
12.3 Death of Beneficiary	38
12.4 Death Before Pension Commencement - Before	38
12.5 Death Before Pension Commencement - After Normal Retirement Date	43
12.6 Settlement Option	44
12.7 Spousal Waivers.....	44
12.8 Death after Pension Commencement.....	45
12.9 Excess Contributions	45
 ARTICLE 13 - ADMINISTRATION.....	 46
13.1 Administration	46
13.2 Duties of the Pension and Benefits Committee	46
13.3 Employee Disclosure	46
13.4 Indemnification of Delegates	47
 ARTICLE 14 - RIGHT TO AMEND OR TERMINATE THE PLAN.....	 48
14.1 Continuation of the Plan	48
14.2 Amendment to the Plan.....	48
14.3 Termination of the Plan	48
14.4 Wind-Up Surplus	48
 ARTICLE 15 - GENERAL PROVISIONS	 49
15.1 Right to Employment.....	49
15.2 Non Alienation of Benefits	49
15.3 Marital Breakdown	49
15.4 Non-Commutation of Pensions.....	50
15.5 Information to be Provided Before Employer Pays Benefits.....	50
15.6 Payment to Minors and Physically or Mentally Handicapped	50
15.7 Service in More than One Province.....	50
15.8 Currency.....	51
15.9 Severability	51
15.10 Construction.....	51
 APPENDIX A	 52
 APPENDIX B	 54

OFFICER'S CERTIFICATE

I, Robert B. Leckie, hereby certify that I am the duly elected Secretary of Indalex Limited and that attached hereto is Exhibit A, a true and complete copy of a resolution adopted by the Board of Directors of the Corporation as of the 7th day of September, 2005 and that such resolution has not been amended, modified or revoked and remains in full force and effect as at the date hereof.

DATED this 7th day of September, 2005



Robert B. Leckie
Secretary

INDALEX LIMITED**WRITTEN CONSENT OF THE BOARD OF DIRECTORS**

The undersigned, being all the members of the Management Committee of the Board of Directors of Indalex Limited, hereby unanimously consent to and adopt the following resolutions:

Amendments to Pension Plans**WHEREAS:**

- A. the Corporation maintains the Retirement Plan for Executive Employees of Indalex Limited and Associated Companies (the "Executive Plan");
- B. Indal Technologies Inc. was sold to the Curtiss-Wright Corporation effective March 1, 2005;
- C. in conjunction with the sale, the Corporation intends to partially terminate the Executive Plan with respect to active members whose employment was transferred to Curtiss-Wright Corporation, and pensioners and deferred vested members who had been employees of Indal Technologies Inc. (the "Partial Termination Group");
- D. the Corporation has reserved the right to amend and terminate the Executive Plan in whole or in part pursuant to Section 14.1;

NOW THEREFORE IT IS RESOLVED THAT:

- 1. The Executive Plan is amended in the manner set out in Appendix 1, attached hereto, effective March 1, 2005 or as applicable.
- 2. Any one of the directors or officers of the Corporation is hereby authorized to sign such documents, including further amendments under the Corporation's seal or otherwise, and perform such acts as may be necessary to give effect to the foregoing resolutions.

- 3. Any one of the directors or officers of the Corporation is hereby authorized to complete and file all required applications and documents related to the amendments to the Executive Plan and related documents and agreements with the Financial Services Commission of Ontario and the Canada Revenue Agency.


DATED this 7th day of September, 2005.



Robert B. Leckie



David J. McCallen



Timothy R.J. Stubbs

EXHIBIT A**Appendix 1****AMENDMENT NO. 6 TO****THE RETIREMENT PLAN FOR EXECUTIVE EMPLOYEES OF INDALEX
LIMITED AND ASSOCIATED COMPANIES
(the "Executive Plan")**

Effective March 1, 2005, the Executive Plan is amended as follows:

1. The Executive Plan is terminated and wound up in part in accordance with the terms of the Executive Plan and the Pension Benefits Act (Ontario) (the "PBA") in respect of the Partial Termination Group.
2. The Corporation authorizes the preparation of a partial termination report.
3. In respect of the Partial Termination Group, pension entitlements under the Executive Plan shall be based on benefits accumulated to March 1, 2005 and further benefit accruals shall cease under the Plan as at that date.
4. For the purposes of Section 2.17 of the Executive Plan (definition of "Final Average Earnings"), the Continuous Employment (as that term is defined in Section 2.10 of the Executive Plan) of active members who form part of the Partial Termination Group shall terminate on March 1, 2005.
5. The fees and expenses related to the administration of the partial termination of the Executive Plan may be paid from the pension fund.
6. In accordance with applicable pension legislation, the Corporation shall provide an individual statement setting out the individual's entitlement and options under the Executive Plan to each member, each former deferred vested member, each pensioner and any other person entitled to such a statement as a result of the partial termination as at March 1, 2005.

OFFICER'S CERTIFICATE

I, Robert B. Leckie, hereby certify that I am the duly elected Secretary of Indalex Limited, and that, attached hereto is Exhibit A, a true and complete copy of a resolution adopted by the Board of Directors of the Corporation as of the 11th day of February, 2005, and that such resolution has not been amended, modified or revoked and remains in full force and effect as at the date hereof.

DATED this 11th day of February, 2005.



Robert B. Leckie

Secretary

EXHIBIT A**INDALEX LIMITED****WRITTEN CONSENT OF THE BOARD OF DIRECTORS**

The undersigned, being all the members of the Management Committee of the Board of Directors of Indalex Limited, hereby unanimously consent to and adopt the following resolutions:

Amendments to Pension Plans**WHEREAS:**

- A. each of the Corporation, Novar Limited and Indal Technologies Inc. is a subsidiary of Novar Overseas Holdings B.V.;
- B. the Corporation maintains the Retirement Plan for Executive Employees of Indalex Limited and Associated Companies (the "Executive Plan");
- C. further to a recent corporate reorganization effective July 26, 2004, participating employers in the Plan which were previously divisions became separate corporate entities and in connection with this change, the Corporation wishes to accept sole responsibility for the administration, operation, interpretation and amendment of the Executive Plan, which responsibility has been delegated to the Corporation by the subsidiary or affiliated companies who participate in the Executive Plan;
- D. the Corporation has reserved the right to amend the Executive Plan pursuant to Section 14.1 effective;

NOW THEREFORE IT IS RESOLVED THAT:

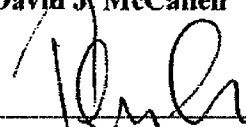
- 1. The Executive Plan be amended in the manner set out in Appendix 1, attached hereto, effective July 26, 2004.
- 2. Any one of the directors or officers of the Corporation is hereby authorized to complete and file all required applications and documents related to the amendments to the Executive Plan and related documents and agreements with the applicable pension regulator and the Canada Revenue Agency.

3. Any one of the directors or officers of the Corporation is hereby authorized to sign such documents, under the Corporation's seal or otherwise, and perform such acts as may be necessary to give effect to the foregoing resolutions.

DATED this 11th day of February, 2005.



Robert B. Leckie

David J. McCallen

Timothy R.J. Stubbs

EXHIBIT A**Appendix 1****AMENDMENT NO. 5 TO****THE RETIREMENT PLAN FOR EXECUTIVE EMPLOYEES OF
INDALEX LIMITED AND ASSOCIATED COMPANIES
(the "Plan")**

Effective July 26, 2004, the Plan is amended by deleting the list of subsidiary or affiliated companies participating in the Plan set out in Appendix B of the Plan and substituting the following:


"Indal Technologies Inc.
Indalex Limited (Indalex Division and Indalloy Toronto Division)"

Creation of Indalex
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86

SECRETARY'S CERTIFICATE

I, Robert B. Leckie, hereby certify that I am the duly appointed Secretary of Indalex Limited, an Alberta corporation (the "Corporation") and that attached hereto as Exhibit A is a true and complete copy of resolutions adopted by the Management Committee of the Board of Directors of the Corporation as of the 26th day of November, 2002, and such resolutions have not been amended, modified or revoked and remain in full force and effect as at the date hereof.

DATED this 27th day of November, 2002



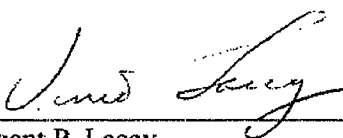
Robert B. Leckie
Secretary

INDALEX LIMITED
WRITTEN CONSENT OF THE MANAGEMENT COMMITTEE
OF THE BOARD OF DIRECTORS


The undersigned, being all the members of the Management Committee of the Board of Directors of Indalex Limited (formerly Caradon Limited), an Alberta corporation, hereby unanimously consent to the adoption of the resolutions annexed hereto as follows:

Exhibit A: Amendment No. 4 to the Retirement Plan for Executive Employees of Indalex Limited and Associated Companies


DATED this 26th day of November, 2002.



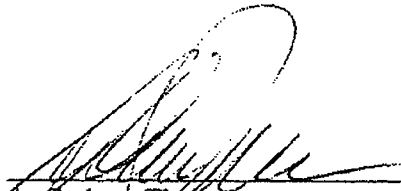
Vincent P. Lacey



Robert B. Leckie



Mark A. Russell



A. Graham Thayer

EXHIBIT A**AMENDMENT NO. 4**

to

**The Retirement Plan for Executive Employees of
Indalex Limited and Associated Companies**

WHEREAS:

- A. the Corporation maintains The Retirement Plan for Executive Employees of Indalex Limited and Associated Companies (the "Plan") for its employees; and
- B. the Corporation has reserved the right to amend the Plan pursuant to section 14.1; and
- C. the Corporation desires to grant portability rights to members of the Plan who retire and are entitled to an immediate pension under the Plan.

NOW THEREFORE IT IS RESOLVED THAT, effective September 15, 2002, the Plan is amended as follows:

- 1. New Section 9.11 is added to the Plan as follows:

"9.11 Portability of Retirement Pension


In lieu of receiving a monthly pension under this Article 9, and before any pension payments commence, a Member may elect to have the Commuted Value of such pension transferred in accordance with Section 11.8."

- 2. Any one of the directors or officers of the Corporation is hereby authorized to sign such documents, under the Corporation's seal or otherwise, and perform such acts as may be necessary to give effect to the foregoing resolutions.

OFFICER'S CERTIFICATE

I, Robert B. Leckie, hereby certify that I am the duly appointed Secretary of Indalex Limited, an Alberta corporation (the "Corporation"), and that, attached hereto as Exhibit A is a true and complete copy of a resolution adopted by the Management Committee of the Board of Directors of the Corporation as of the 23rd day of August, 2002, and such resolution has not been amended, modified or revoked and remains in full force and effect as at the date hereof.

DATED this 23rd day of August, 2002



Robert B. Leckie
Secretary

INDALEX LIMITED
WRITTEN CONSENT OF THE MANAGEMENT COMMITTEE
OF THE BOARD OF DIRECTORS

The undersigned, being all the members of the Management Committee of the Board of Directors of Indalex Limited, an Alberta corporation (the "Corporation"), hereby unanimously consent to and adopt the following resolutions:

Amendments to the Pension Plans

WHEREAS:

- A. the Corporation maintains the following pension plans for its employees:
 - (a) The Retirement Plan for Salaried Employees of Indalex Limited and Associated Companies ("The Salaried Plan");
 - (b) The Retirement Plan for Executive Employees of Indalex Limited and Associated Companies ("The Executive Plan");
- B. the Corporation has reserved the right to amend The Salaried Plan and The Executive Plan, pursuant to section 14.1 of these plans, respectively; and
- C. the Corporation desires to amend the definition of "earnings" in The Salaried Plan and The Executive Plan.

NOW THEREFORE IT IS RESOLVED THAT:

- 1. The Salaried Plan be amended in the manner set out in Appendix 1, attached hereto, effective January 1, 2002.
- 2. The Executive Plan be amended in the manner set out in Appendix 2, attached hereto, effective January 1, 2002.
- 3. Any one of the directors or officers of the Corporation is hereby authorized to complete and file all required applications and documents relating to the amendments to the above-noted pension plans and related documents and agreements with the applicable provincial regulators and the Canada Customs and Revenue Agency.

4. Any one of the directors or officers of the Corporation is hereby authorized to sign such documents, under the Corporation's seal or otherwise, and perform such acts as may be necessary to give effect to the foregoing resolutions.

DATED as of the _____ day of August 2002.

Vincent P. Lacey

Robert B. Leckie

Mark A Russell

A. Graham Thayer

EXHIBIT A**Appendix 2**

**AMENDMENT NO. 3 TO
THE RETIREMENT PLAN FOR EXECUTIVE EMPLOYEES OF
INDALEX LIMITED AND ASSOCIATED COMPANIES
(the "Plan")**

WHEREAS performance bonuses will be included in the definition of "earnings" in the Plan, effective January 1, 2002;

Effective January 1, 2002, the Plan is amended as follows:

Section 2.13 (definition of "Earnings") is deleted and replaced with the following:

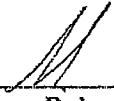
- "2.13 **Earnings** means cash compensation paid by the Employer which:
- (a) effective prior to January 1, 2002:
 - (i) includes commissions; but
 - (ii) excludes performance bonuses, overtime bonuses and other special compensation; and
 - (b) effective on and after January 1, 2002:
 - (i) includes commissions and performance bonuses; but
 - (ii) excludes overtime bonuses and other special compensation."

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193

OFFICER'S CERTIFICATE

I, Robert B. Leckie, hereby certify that I am the duly appointed Secretary of Indalex Limited (formerly known as Caradon Limited), an Alberta corporation (the "Corporation"), and that, attached hereto as Exhibit A is a true and complete copy of certain resolutions adopted by the Board of Directors of the Corporation as of the 19th day of December, 2000, and that such resolutions have not been amended, modified or revoked and remain in full force and effect as at the date hereof.

DATED this 9 day of FEBRUARY, 2001.



Name: Robert B. Leckie
Title: Secretary

EXHIBIT A**INDALEX LIMITED****WRITTEN CONSENT OF THE BOARD OF DIRECTORS**

The undersigned, being all the members of the Board of Directors of Indalex Limited, an Alberta corporation (the "Corporation"), hereby unanimously consent to and adopt the following resolutions:

Amendments to Pension and Benefit Plans**WHEREAS:**

- A. the Corporation maintains the following pension plans for its employees:
 - (a) the Retirement Plan for Hourly Employees of Caradon Limited and Associated Companies (the "Hourly Plan");
 - (b) the Retirement Plan for Salaried Employees of Caradon Limited and Associated Companies (the "Salaried Plan");
 - (c) the Retirement Plan for Executive Employees of Caradon Limited and Associated Companies (the "Executive Plan");
- B. the Corporation has changed its corporate name to "Indalex Limited", effective April 30, 2000;
- C. the Corporation desires to amend each of the Hourly Plan, the Salaried Plan and the Executive Plan (collectively the "Pension Plans") to reflect the change of its corporate name;
- D. the Corporation has reserved the right to amend each of the Hourly Plan, the Salaried Plan and the Executive Plan pursuant to section 14.1 thereof;
- E. the Corporation maintains a benefit plan for its employees by Policy No. 66370 maintained with Canada Life Assurance Company (the "Benefit Plan");

EXHIBIT A**NOW THEREFORE BE IT RESOLVED THAT:**

1. The Hourly Plan be amended in the manner set out in Appendix 1 attached hereto, effective January 1, 2001.
2. The Salaried Plan be amended in the manner set out in Appendix 2 attached hereto, effective January 1, 2001.
3. The Executive Plan be amended in the manner set out in Appendix 3 attached hereto, effective January 1, 2001.
4. The master trust agreement and the participating trust agreements made between the Corporation and CIBC Mellon Trust Company relating to the Pension Plans be amended to reflect the change of the Corporation's corporate name, effective January 1, 2001.
5. All agreements and documents relating to the Pension Plans (including, but not limited to, investment management agreements, custodian agreements and statements of investment policies and goals) be amended, if necessary, to reflect the change of the Corporation's corporate name, effective January 1, 2001.
6. The Benefit Plan be amended to reflect the change of the Corporation's corporate name, effective January 1, 2001.
7. All the providers of services to the Pension Plans and the Benefit Plan (including but not limited to William M. Mercer Limited, Standard Life Assurance Company and Canada Life Assurance Company) be notified of the change of the corporate name of the Corporation.
8. Any one of the directors or officers of the Corporation is hereby authorized to complete and file all required applications and documents relating to the amendments to the Pension Plans and related documents and agreements with the applicable pension regulator(s) and Canada Customs and Revenue Agency.
9. Any one of the directors or officers of the Corporation is hereby authorized to sign such documents, under the Corporation's seal or otherwise, and perform such acts as may be necessary to give effect to the foregoing resolutions.

EXHIBIT A

Dated as of the _____ day of _____, 2000.

Mark Emery

Leon Kozierok

Vincent P. Lacey

Robert B. Leckie

EXHIBIT A**Appendix 3****AMENDMENT NO. 2 TO
THE RETIREMENT PLAN FOR EXECUTIVE EMPLOYEES OF
CARADON LIMITED AND ASSOCIATED COMPANIES
(the "Plan")**

WHEREAS the name of the Corporation changed from "Caradon Limited" to "Indalex Limited", effective April 30, 2000;

Effective January 1, 2001, the Plan be amended as follows:

16. The name of the Plan be changed to "The Retirement Plan for Executive Employees of Indalex Limited and Associated Companies".
17. All references to "Caradon Limited" in the Plan and the Appendices attached to the Plan be deleted and replaced with "Indalex Limited".
18. All references to "Caradon" in the Appendices attached to the Plan be deleted and replaced with "Indalex".

INDALEX LIMITED
WRITTEN CONSENT OF THE BOARD OF DIRECTORS

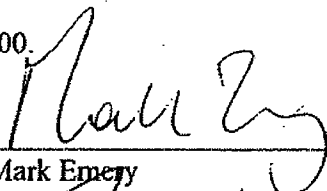
The undersigned, being all the members of the Board of Directors of Indalex Limited, an Alberta corporation (the "Corporation"), hereby unanimously consent to and adopt the following resolution:

MANAGEMENT COMMITTEE

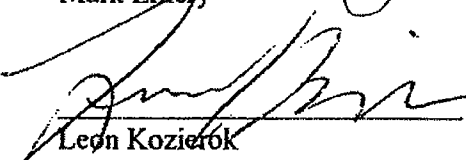
RESOLVED, That all prior appointments to the Management Committee of the Board of Directors ("Management Committee") are hereby revoked and the following persons are hereby appointed to the Management Committee until their appointment is revoked by resolution of the Board of Directors:

- Mark Emery
- Leon Kozierek
- Vincent P. Lacey
- Robert B. Leckie

Dated as of the 30th day of October, 2000.




Mark Emery



Leon Kozierek



Vincent P. Lacey



Robert B. Leckie

SECRETARY'S CERTIFICATE

I, Robert B. Leckie, hereby certify that I am the duly elected Secretary of Caradon Limited, an Alberta Corporation (the "Corporation"), and that, as such, I am authorized to execute this certificate and I do further certify that attached hereto as Exhibit A is an accurate and complete copy of a resolution adopted by Written Consent of the Board of Directors of the Corporation as of December 13, 1999. Such resolution has not been amended, modified or rescinded and remains in full force and effect in the form in which it was adopted by such consent.

IN WITNESS WHEREOF, the undersigned Secretary of the Corporation has executed this certificate and caused the seal of the Corporation to be affixed hereto this 7th day of January, 2000.



Secretary

23.000.1277 12.01 CARADON LIMITED
12/17/89 FRI 16:11 FAX 805 273 7004
DEC-17-89 09:13am FROM CARADON INC

+2108410274
INDAL TECH
+2108410274

T-32NU.15/1 P. 28
18 P.03 F-003

002

1505-833-7422 CARADON INDEX

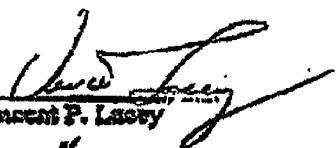
DEC 17 1989 10:41
CARADON EXECUTIVE
PLAN FILE

CARADON LIMITED
WRITTEN CONSENT OF THE BOARD OF DIRECTORS


The undersigned, being all the members of the Board of Directors of Caradon Limited, an Alberta corporation (the "Corporation"), hereby unanimously consent to and adopt the following resolution attached hereto as follows:

Exhibit A: Amendment No. 1 to the Retirement Plan for Executive Employees of Caradon Limited and Associated Companies

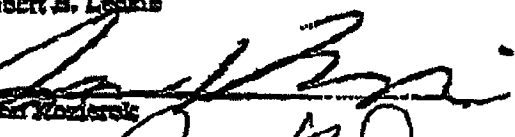
Dated as of the 13th day of December, 1989.



Vincent P. Lacey



Robert B. Leckie



Robert B. Leckie



Ian Stuart

EXHIBIT A

AMENDMENT NO. 1

*TO THE RETIREMENT PLAN FOR EXECUTIVE EMPLOYEES OF
CARADON LIMITED AND ASSOCIATED COMPANIES*

WHEREAS Caradon Limited (the "Company") established the Retirement Plan for Executive Employees of Caradon Limited and Associated Companies (the "Plan");

WHEREAS, pursuant to Section 14.1 of the Plan, the Company has the right to amend the Plan; and

WHEREAS the Company wishes to amend the Plan to comply with the Income Tax Act, effective January 1, 1995;

NOW THEREFORE IT IS RESOLVED THAT the Plan is hereby amended, effective January 1, 1995, as follows:

1. Section 9.6(b) is amended by adding the following sentence to the end of the second paragraph:

"During the time the Quebec Member is receiving all, or any portion of, his pension in whole or in part under this Section 9.6, the Quebec Member shall not accrue further benefits under the Plan."

2. Section 11.8(c) is amended by adding the following phrase to the end of the subsection:

“, and any such transfer shall be considered as a contribution to a Registered Retirement Savings Plan and, therefore, subject to the overcontribution rules under the Income Tax Act.”

NOW THERE FORE IT IS FURTHER RESOLVED THAT any director or officer of the Company is hereby authorized to execute such documents and perform such acts (including filing such amendments with the financial Services Commission of Ontario and the Canada Customs and Revenue Agency) as may be required to give effect to the foregoing.

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OFFICER'S CERTIFICATE

I, Robert B. Leckie, hereby certify that I am the duly elected Secretary of Indalex Limited and that attached hereto is Exhibit A, a true and complete copy of a resolution adopted by the Board of Directors of the Corporation as of the 12th day of December, 2005 and that such resolution has not been amended, modified or revoked and remains in full force and effect as at the date hereof.

DATED this 14th day of December, 2005



Robert B. Leckie
Secretary

INDALEX LIMITED**WRITTEN CONSENT OF THE BOARD OF DIRECTORS**

The undersigned, being all the members of the Management Committee of the Board of Directors of Indalex Limited, hereby unanimously consent to and adopt the following resolutions:

Amendments to Pension Plans**WHEREAS:**

- A. the Corporation maintains the Retirement Plan for Executive Employees of Indalex Limited and Associated Companies (the "Executive Plan");
- B. the Corporation wishes to close the Executive Plan to new Members, effective September 1, 2005;
- C. the Corporation has reserved the right to amend the Executive Plan pursuant to Section 14.1;

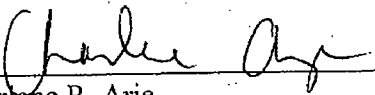
NOW THEREFORE IT IS RESOLVED THAT:

- 1. The Executive Plan is amended in the manner set out in Appendix 1, attached hereto, effective September 1, 2005.
- 2. Any one of the directors or officers of the Corporation is hereby authorized to sign such documents, including further amendments under the Corporation's seal or otherwise, and perform such acts as may be necessary to give effect to the foregoing resolutions.

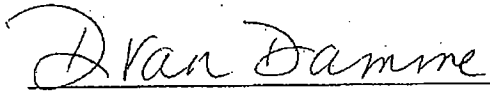
3. Any one of the directors or officers of the Corporation is hereby authorized to complete and file all required applications and documents related to the amendments to the Executive Plan and related documents and agreements with the Financial Services Commission of Ontario and the Canada Revenue Agency.

IN WITNESS WHEREOF, the undersigned members of the Board of Directors of this Corporation have placed their hands on this Unanimous Written Consent and made these forgoing resolutions effective as of the 12th day of December, 2005.

DIRECTORS:




Charlene R. Arje



Deborah Van Damme

Thomas F. Larkins



Robert B. Leckie

Timothy R. J. Stubbs

John J. Tus

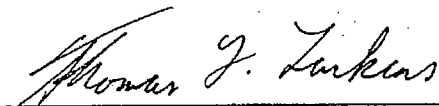
3. Any one of the directors or officers of the Corporation is hereby authorized to complete and file all required applications and documents related to the amendments to the Salaried Plan and related documents and agreements with the Financial Services Commission of Ontario and the Canada Revenue Agency.

IN WITNESS WHEREOF, the undersigned members of the Board of Directors of this Corporation have placed their hands on this Unanimous Written Consent and made these forgoing resolutions effective as of the 12th day of December, 2005.

DIRECTORS:

Charlene R. Arje

Deborah Van Damme



Thomas F. Larkins

Robert B. Leckie

Timothy R. J. Stubbs



John J. Tus

3. Any one of the directors or officers of the Corporation is hereby authorized to complete and file all required applications and documents related to the amendments to the Executive Plan and related documents and agreements with the Financial Services Commission of Ontario and the Canada Revenue Agency.

IN WITNESS WHEREOF, the undersigned members of the Board of Directors of this Corporation have placed their hands on this Unanimous Written Consent and made these forgoing resolutions effective as of the 12th day of December, 2005.

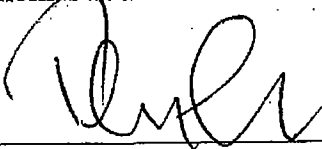
DIRECTORS:

Charlene R. Arje

Deborah Van Damme

Thomas F. Larkins

Robert B. Leckie



Timothy R. J. Stubbs

John J. Tus

Appendix 1**AMENDMENT NO. 7 TO****THE RETIREMENT PLAN FOR EXECUTIVE EMPLOYEES OF INDALEX
LIMITED AND ASSOCIATED COMPANIES**
(the "Executive Plan")

Effective September 1, 2005, the Executive Plan is amended as follows:

- I. By adding the following sentence to Section 3.1:
"On and after September 1, 2005, the Plan shall be closed to new Members."
2. By deleting Section 3.2 and substituting the following:

3.2 New Members

 - (a) Each Employee hired on and after January 1, 1995 but prior to September 1, 2005 will join the Plan on the later of:
 - (1) the first day of the month coincident with or next following the date of hire; or
 - (2) the date on which the Employee becomes a Designated Executive.
 - (b) Notwithstanding Section 3.2(a), above, an Employee who becomes a Designated Executive on and after September 1, 2005 shall not be eligible to join the Plan."
3. By adding the following as Section 3.5(c):
"(c) Notwithstanding Section 3.5(a) and Section 3.2 (a) any Employee whose Continuous Employment was terminated and who is re-employed by the Company on and after September 1, 2005 shall not be eligible to become a Member of the Plan."

Section 5 - Consultant

Give the name of any individual or firm (such as a pension benefits consultant or an actuarial firm) that we can contact in relation to the plan.

Language of correspondence

Same as insurance company, or Name of consultant

Same as trustee

English

French

Contact

Address

City

Province

Postal code

Area code

Telephone number

Section 6 - Amendment details

a) The amendment is required by:

Canada Customs and Revenue Agency

Provincial pension authority (please identify province)

Pension Benefits Standards Act, 1985

Plan sponsor

Other (specify)

b) If the plan is subject to registration with another federal or provincial authority, has an amendment been filed with that authority?

yes no

c) Identify the plan type:

Money Purchase

Defined Benefit

Combination Defined Benefit/Money Purchase

Flexible pension plan

d) Is the plan currently a (check box if applicable)

Multi-employer plan (MEP)

Specified multi-employer plan (SMEP)

Designated plan

e) Are there any members who are/were considered to be persons connected with a participating employer?

yes no

If yes, give the following information:

Name of member

Social insurance number

Company name

Table with 3 columns: Name of member, Social insurance number, Company name. Multiple rows for data entry.

NOTE: An employer has to file Form T1007, Connected Person Information Return, for each connected person. For more information, see the current version of Interpretation Bulletin IT-124, Contributions to Registered Retirement Savings Plans.

f) Does the amendment remove or reduce the requirement for employees to make contributions to the plan?

yes no

If yes, and contributions have been returned to the members, give the date of distribution.

Table for date of distribution with columns: Year, Month, Day.

g) Does the plan amendment provide for a partial upgrade of benefits to replace benefits that were paid to a spouse or former spouse as a result of marriage breakdown?

yes no

h) Does the amendment allow part-time employees to participate?

yes no

i) The amendment changes the (check box if applicable)

benefit rate or formula

type of remuneration on which the benefit is based

type of service recognised as pensionable service

employees' contribution rate

Section 7 - Multi-plan coverage

For SMEPs, go to section 11. For MEPs, go to section 8.

Are any members of this plan participating in another registered pension plan or deferred profit sharing plan of the same employer or another employer who does not deal at arm's length with the employer?

yes no

If yes, give the plan name(s) and registration number(s)

Plan name

Registration Number

Table with 2 columns: Plan name, Registration Number. Multiple rows for data entry.

Section 8 - Past service

For Money Purchase plans, go to section 10.

- a) Does the amendment allow benefits to be improved or service to be recognized on a past-service basis? yes no
If no, go to section 9.
- b) Does the amendment provide for the crediting of pre-1990 past-service benefits? yes no
If no, go to paragraph e) below.
- c) Are these benefits subject to the proportionality condition stated in the Registered Plans Directorate newsletter no. 99-1, *Proportionality condition for pre-1990 pension benefits*? yes no
If yes, and these benefits are being funded, provide detailed calculations demonstrating compliance with the present value test. If no, indicate on the lines below the exception under which the benefits are exempted from the proportionality condition.

- d) Where pre-1990 past-service benefits are being provided, are they a substitute for salary or any other form of compensation as agreed to by the member? yes no
- e) Does the amendment provide new benefits or upgrade benefits to connected persons or employees who were connected persons for years of service before 1991 (before 1992 for grandfathered plans)? yes no
If no, go to section 9.
- f) Are the pre-1991 accrued benefits (pre-1992 for grandfathered plans) for active connected persons or for active employees who were connected persons (members who are not connected persons now but who were connected persons during the pre-reform service for which benefits are provided) more than 50% of the present value of benefits for all active plan members? yes no
Attach a statement signed by an actuary indicating the total value of the accrued liabilities for both active connected persons and active employees who were connected with the employer and for the other active plan members. If there is more than one employer participating in the plan, a statement must be prepared for each employer.

Section 9 - Plan benefit formula

- a) Does the amendment alter the normal form or any optional form of pension payable to the member? yes no
- b) If yes to a), is the normal form of benefit payable from the plan the form that pays out the highest monthly/annual amount to a member? yes no
- c) If no to b), indicate the optional form that does pay the member the highest monthly/annual amount (see paragraph 8302(3)(a) of the *Income Tax Regulations*). Give the benefit rate for the highest optional form.

Section 10 - Specimen

Only complete this section if the plan conforms or ceases to conform to an approved specimen.

- Does the amendment change the plan text or funding so that it no longer conforms to the approved specimen? yes no
- NOTE: The approved specimen may have permitted variables. If you are only changing a permitted variable, answer no to this question. Otherwise, answer yes and send us a certified copy of the document that no longer conforms to the approved specimen (the plan text or funding document, whichever applies).

Section 11 - Termination

Complete this section if the amendment terminates the pension plan.

- a) Does the amendment terminate the plan? yes no
If yes, give the date of plan termination:

Year	Month	Day
- b) Were the total plan funds disbursed? yes no
If yes, give the date of final distribution of the funds:

Year	Month	Day

NOTE: You must notify us in writing no later than 60 days from the date the last of the plan assets are paid or transferred out of the plan. If you are not providing this information now, you can notify us by letter or by using Form T244, *Registered Pension Plan Annual Information Return*.

Section 12 - Certification

As an authorized officer of the administrator of the pension plan noted above, I, Robert B. Leckie, certify that the information given on this application is, to the best of my knowledge, correct and complete. I also certify that, to the best of my knowledge, the plan complies with and is being administered according to sections 147.1, 147.2, 147.3, and 147.4 of the *Income Tax Act* and the related Regulations.

Dec 12, 2005  Robert B. Leckie, VP & Sect 210-694-1028
Date Signature of authorized person Position or title Telephone

**APPLICATION FOR REGISTRATION OF A PENSION PLAN AMENDMENT**

Form 1.1 – Approved by the Superintendent of Financial Services pursuant to
the *Pension Benefits Act*, R.S.O. 1990, c.P.8, as amended (the “PBA”)
(All applicable questions must be completed – please type or print)

INFORMATION ABOUT THIS APPLICATION

1. Plan registration number: 533646

2. Name of pension plan:
Retirement Plan for Salaried Employees of Indalex Limited and Associated Companies

3. Name of employer or plan sponsor:
Indalex Limited

4. The effective date of the amendment is: 2005/09/01
yyyy/mm/dd

5. Amendment number(s) (if multiple amendments are submitted): 5

6. Indicate whether the application involves an amendment(s) concerning:

- transfer of assets
- merger of plans
- refund of contributions
- distribution of surplus
- plan conversion
- reduction of accrued benefits or refund of contributions under Section 47 of Regulation 909, R.R.O. 1990, as amended (the "Regulation")
- early retirement/downsizing program
- full wind up of the pension plan (*complete questions 1 to 6, 11, and 21 to 22 only*)
- partial wind up of the pension plan
- other (*provide details*) Suspend contributions to flexible benefit provisions

AMENDMENTS CONCERNING BENEFITS OR CONTRIBUTIONS

7. Indicate whether the application involves any of the following (*please answer each question*):

- | Yes | No | |
|--------------------------|-------------------------------------|--|
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | eligibility for membershipif "yes", complete question 12 |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | normal retirement ageif "yes", complete question 13 |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | integration with the Canada Pension Plan ("CPP") or Québec Pension Plan ("QPP")if "yes", complete question 14 |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | employee contributions rateif "yes", complete question 15 |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | employer contributionsif "yes", complete question 16 |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | benefit calculation/formula: for plans providing defined benefits if "yes", complete questions 17, 19 |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | benefit calculation/formula: career average earnings if "yes", complete question 18 |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | the provision of automatic (contractual) increases to pensions in pay or deferred pensionsif "yes", complete question 20 |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | ad hoc increases to pensions in pay or deferred pensionsif "yes", complete question 8 |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | funding instrument if "yes", complete question 9 |

If the answer to each of the items listed above is "no", go directly to page 8 and complete the certification.

STATISTICAL INFORMATION CONCERNING PENSIONS AND PENSION PLANS

The information requested in question 8 to 22 is to be provided for the purpose of compiling statistical information related to pensions and pension plans pursuant to section 97 of the PBA.

8. (a) Does this application involve an amendment to provide ad hoc increases to pensions in pay or deferred pensions? (if "yes", answer (b) and (c) below; if "no", go to question 9)

yes

no

(b) How are these increases to be made?

ad hoc increase pursuant to a collective agreement and plan amendment

ad hoc increase made voluntarily by the employer or plan sponsor in accordance with a plan amendment

other (provide details) _____

(c) What was the effective date of the increase? _____

yyyy/mm/dd

9. Funding instrument/arrangement

(a) Are the benefits provided for in the plan totally insured and/or guaranteed by an insurance company?

yes

no

(b) If 9(a) is "no", please indicate the funding instrument/arrangement:

insurance company contract not fully insured or guaranteed

trust agreement with:

individual trustees

trust company

pension fund society

government, or agency, board or commission established by statute for administration of a pension fund

other (provide details) _____

10. Indicate the type of plan (in cases where this amendment changes the type of plan, indicate the new plan type):

multi-employer:

defined benefit

defined contribution

defined contribution

defined benefit

combination of defined benefit and defined contribution

other (provide details) _____

11. Multi-employer or negotiated cost plans

Is the pension plan a multi-employer pension plan established pursuant to a collective agreement or trust agreement; or, a pension plan that provides defined benefits where the obligation of an employer to contribute to the pension plan is limited to a fixed amount or rate set out in a collective agreement? (See subsection 6(1) of the Regulation.)

yes

no

Information Concerning Benefits Or Contributions

12. Eligibility for membership

Specify the class or classes of employees who are eligible to join the plan (multiple entries acceptable except for "all employees"):

all employees

salaried employees

hourly employees

union members

executives including "connected persons" as that term is defined in the *Income Tax Act*, R.S.C. 1985 (5th supp.), c.1, as amended

other (provide details) _____

13. Normal retirement age

Indicate normal retirement age according to the plan text: _____

14. Integration with Canada Pension Plan ("CPP") or Québec Pension Plan ("QPP")

Indicate if the contribution and/or benefit rate are integrated with contributions or benefits of the CPP/QPP:

- contribution rate integrated with CPP/QPP
- benefit formula integrated with CPP/QPP
- both are integrated with CPP/QPP
- neither is integrated with CPP/QPP

15. Employee contributions

Identify employee contribution rate for normal cost:

- no employee contribution required
- _____ % of earnings if not integrated with CPP/QPP
- _____ % of earnings above Year's Maximum Pensionable Earnings ("YMPE")
- _____ % of earnings up to YMPE
- other (provide details) _____

16. Employer contributions

Identify employer contribution rate or amount for normal cost:

- employer pays balance of cost
- _____ % of earnings if not integrated with CPP/QPP
- _____ % of earnings above YMPE
- _____ % of earnings up to YMPE
- \$ _____ per year
- other (provide details) _____

Pension Plans Which Have Any Defined Benefit Provisions, Complete Questions 17 to 20

17. Benefit calculation

Are pension benefits per year of service based on *(check the most appropriate)*:

- final average earnings over the last _____ years
- best average earnings for the best _____ years *(of the last _____ years, if applicable)*
- career average earnings
- flat benefit

18. (a) If the benefit calculation is based on career average earnings, are career earnings or benefits updated, for example, in accordance with a price or wage index?

- yes
- no

(b) If the benefit calculation is updated, are all earnings included or only those after a specified date?

- yes *(all earnings included)*
- no *(only earnings after _____)*
yyyy/mm/dd

19. Benefit formula - for normal retirement benefit only (do not include optional or alternative benefits requiring specific conditions)

Indicate amount or rate of benefit formula per year of service:

- _____ % of earnings if not integrated with CPP/QPP
- _____ % of earnings above YMPE
- _____ % of earnings up to YMPE
- \$ _____ per month for each year of service
- \$ _____ per month for each _____ hour(s) worked
- other *(provide details)* _____

20. Does this application involve an amendment to provide for automatic (contractual) increases to pensions in pay or deferred pensions (e.g., indexation to CPI)?

yes

no

PLAN WIND UP IN FULL

21. (a) Does this application involve the full wind up of the pension plan?

yes

no

If "yes", what is the effective date of plan wind up? _____
yyyy/mm/dd

(b) What is the major reason for the wind up of the pension plan?

merged with/replaced by another pension plan _____
plan registration number

company dissolved or plant closed

no members remaining

financial considerations

other (provide details) _____

22. If the plan is being wound up and not replaced with another pension plan, indicate whether either of the following arrangements will be offered by the employer:

a Registered Retirement Savings Plan ("RRSP")

a Deferred Profit Sharing Plan ("DPSP")

both an RRSP and DPSP

Neither an RRSP nor a DPSP

**ADMINISTRATOR'S CERTIFICATION
APPLICATION FOR REGISTRATION OF A PENSION PLAN AMENDMENT**

Pursuant to the *Pension Benefits Act*, R.S.O. 1990, c.P.8, as amended (the "PBA")
and Regulation 909, R.R.O. 1990, as amended (the "Regulation")

Re: PENSION PLAN: Retirement Plan for Salaried Employees of Indalex Limited and Associated Companies

Registration 533646

(insert full plan name and registration number)

(the "Pension Plan").

I AM: *(check the appropriate box)*

the administrator of the Pension Plan (the "Administrator"), or

an agent or representative of the Administrator authorized by the Administrator to make this application to register an amendment to the Pension Plan and to give this certification.

I CERTIFY THAT:

- (a) attached to this application to register an amendment to the Pension Plan are certified copies of:
- (i) the amendment, and
 - (ii) all other documents required to be filed under the PBA and Regulation as part of this application to register an amendment to the Pension Plan,
- (b) the information contained in the application and the attached documents is true and accurate and the application is complete,
- (c) the amendment to the Pension Plan which is the subject of this application complies with the requirements of the PBA and Regulation,
- (d) the pension legislation of the following Canadian jurisdictions other than Ontario applies to one or more members, former members or other beneficiaries of the Pension Plan:

Alberta, British Columbia, New Brunswick, Quebec, Saskatchewan

(insert names of all relevant Canadian jurisdictions; if none, leave blank)

- (e) where the pension legislation of one or more Canadian jurisdictions other than Ontario applies to one or more members, former members or other beneficiaries of the Pension Plan:
- (i) I am aware of, or have consulted with professionals who have advised me of, the requirements of the pension legislation of those other jurisdictions,
 - (ii) I have reviewed this application, and
 - (iii) to the best of my knowledge and belief, based on the information and advice provided to me, including that referred to herein, the amendment to the Pension Plan which is the subject of this application complies with the requirements of the pension legislation of those other jurisdictions.

THE ADMINISTRATOR'S CERTIFICATION CONTINUES ON THE NEXT PAGE

DATED this 12 day of Dec, 2005
(day) (month) (year)

Signature of Administrator or Administrator's Agent or Representative

Robert B. Leckie

Name of Administrator or Administrator's Agent or Representative (printed)

Indalex Limited.

10931 Laureate Drive

San Antonio, TX 78249

Address of Administrator or Administrator's Agent or Representative (printed)

It is an offence under the *Criminal Code*, R.S.C. 1985, c. C-46, as amended for anyone to knowingly make or use a false document with the intent it be acted on as genuine.

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