S.C.C. File No.
(C52187 & C52346)

IN THE SUPREME COURT OF CANADA
(APPLICATION FOR LEAVE TO APPEAL FROM THE COURT OF APPEAL FOR ONTARIO)

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.

B E T W E E N :

SUN INDALEX FINANCE, LLC

APPLICANT
(Respondent)

- and -

UNITED STEELWORKERS, KEITH CARRUTHERS, LEON KOZIEROK, RICHARD BENSON, JOHN FAVERI, KEN WLADRON, JOHN (JACK) W. ROONEY, BERTRAM MCBRIDE, MAX DEGEN, EUGENE D'IORIO, NEIL FRASER, RICHARD SMITH, ROBERT LECKIE, FRED GRANVILLE, GEORGE L. MILLER, THE CHAPTER 7 TRUSTEE OF THE BANKRUPTCY ESTATES OF THE US INDALEX DEBTORS, and THE MONITOR, FTI CONSULTING CANADA ULC

RESPONDENTS
(Appellants/Respondents)

- and -

MORNEAU SOBECO LIMITED PARTNERSHIP and THE SUPERINTENDENT OF FINANCIAL SERVICES

INTERVENERS
(Interveners)

---

**APPLICATION FOR LEAVE TO APPEAL OF THE APPLICANT, SUN INDALEX FINANCE, LLC**
**(pursuant to Sections 40 and 43 of the *Supreme Court Act*, R.S.C. 1985, c. S-26 and Rule 25 of the *Rules of Supreme Court of Canada*, SOR/2002-156)**
**VOLUME II OF II**

---


**GOODMANS LLP**
Suite 3400, 333 Bay Street
Toronto, ON M5H 2S7

**Benjamin Zarnett**
**Fred Myers**
**Brian Empey**
Tel.: 416.979.2211
Fax: 416.979.1234
Email: bzarnett@goodmans.ca
fmyers@goodmans.ca
bempey@goodmans.ca

**Counsel to the Applicant, Sun Indalex Finance, LLC**

**NELLIGAN O'BRIEN PAYNE LLP**
Suite 1600, 66 Slater Street
Ottawa, ON K1P 5H1

**Dougald E. Brown**
Tel.: 613.238.8080
Fax: 613.238.2098
Email: dougald.brown@nelligan.ca

**Agent for the Applicant, Sun Indalex Finance, LLC**

**ORIGINAL TO:** **THE REGISTRAR**
Supreme Court of Canada
301 Wellington Street
Ottawa, ON K1A 0J1

**COPIES TO:** **SACK GOLDBLATT MITCHELL LLP**
Barristers and Solicitors
20 Dundas Street West, Suite 1100
Toronto, ON M5G 2G8

**Darrell L. Brown**
Tel: 416.979.4050
Fax: 416.591.7333
Email: dbrown@sgmlaw.com

Lawyers for the United Steelworkers

**KOSKIE MINSKY LLP**
20 Queen Street West, Suite 900
Toronto, ON M5H 3R3

**Andrew J. Hatnay**
Tel: 416.595.2083
Fax: 416.204.2872
Email: ahatnay@kmlaw.ca

**Demetrios Yiokaris**
Tel: 416.595.2130
Fax: 416.204.2810
Email: dyiokaris@kmlaw.ca

Lawyers for 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, members of the Retirement Plan for Executive Employees of Indalex Canada and Associated Companies

**STIKEMAN ELLIOTT LLP**
Barristers & Solicitors
5300 Commerce Court West 199 Bay Street
Toronto, ON M5L 1B9

**Ashley John Taylor**
Tel: 416.869.5236
Fax: 416.947.0866
Email: ataylor@stikeman.com

**Lesley Mercer**
Tel: 416.869.6859
Fax: 416.947.0866
Email: lmercer@stikeman.com

Lawyers for the Monitor, FTI Consulting Canada ULC

**FINANCIAL SERVICES COMMISSION OF ONTARIO**
Legal Services Branch
5160 Yonge Street
17th Floor, Box 85
Toronto, ON M2N 6L9

**Mark Bailey**
Tel: 416.590.7555
Fax: 416.590.7556
Email: mark.bailey@fsco.gov.on.ca

Lawyers for the Superintendent of Financial Services

**CAVALLUZZO HAYES SHILTON McINTYRE & CORNISH LLP**
Barristers and Solicitors
474 Bathurst Street, Suite 300
Toronto, ON M5T 2S6

**Hugh O'Reilly**
Tel: 416.964.5514
Fax: 416.964.5895
Email: horeilly@cavalluzzo.com

**Amanda Darrach**
Tel: 416.964.5511
Fax: 416.964.5895
Email: adarrach@cavalluzzo.com

Lawyers for Morneau Sobeco Limited Partnership

**CHAITONS LLP**
Barristers & Solicitors
5000 Yonge Street, 10th Floor
Toronto, ON M2N 7E9

**Harvey Chaiton**
Tel: 416.218.1129
Fax: 416.218.1849
Email: harvey@chaitons.com

**George Benchetrit**
Tel: 416.218.1141
Fax: 416.218.1841
Email: George@chaitons.com

Lawyers for George L. Miller, the Chapter 7 Trustee of the Bankruptcy Estates of the US Indalex Debtors

# INDEX

## TABLE OF CONTENTS

### VOLUME I

**VOLUME II**

**5. Evidence Relied Upon**

# TAB 5

# TAB A

Court File No.

**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.

Applicants

**AFFIDAVIT OF TIMOTHY R.J. STUBBS**
(Sworn April 3, 2009)

I, Timothy R.J. Stubbs, of the City of Lincolnshire, in the State of Illinois, United States of America, **MAKE OATH AND SAY AS FOLLOWS:**

**Introduction**

1. I am the President and Chief Executive Officer of Indalex Limited ("**Indalex Canada**"), Indalex Holdings (B.C.) Ltd. ("**Indalex BC**"), 6326765 Canada Inc. ("**632**"), and Novar Inc. ("**Novar**") (collectively, the "**Applicants**"), and as such have knowledge of the matters deposed to in this affidavit. Where this affidavit is not based on my direct personal knowledge, it is based on information and belief and I verily believe such information to be true.

**Nature of Application and Overview of Relief Sought**

2. This affidavit is sworn in support of the Applicants' application for protection from their creditors under the *Companies' Creditors Arrangement Act* (Canada)

(the "**CCAA**"). As a result of the pervasive decline in the global economy and the decline in the demand for extruded aluminum products, the Applicants' business, of aluminum extrusion (a process which forms and strengthens aluminum for use by end-users), is facing serious financial challenges and the Applicants are facing a looming liquidity crisis.

3. This Application is brought in conjunction with a parallel proceeding commenced urgently, by way of a voluntary petition filed on March 20, 2009, in the United States Bankruptcy Court for the District of Delaware (the "**U.S. Bankruptcy Court**") by the Applicants' U.S. direct and indirect parents, Indalex Holdings Finance, Inc. ("**Indalex Finance**"), and Indalex Holding Corp. ("**Indalex Holding**"), and certain of their U.S. subsidiaries (collectively with Indalex Finance and Indalex Holding, "**Indalex U.S.**") pursuant to Chapter 11 of the United States Bankruptcy Code (the "**Chapter 11 Proceedings**").

4. The Applicants require relief under the CCAA in order to stabilize their business and seek a long term strategic solution for their business operations.

5. The relief requested includes a request for:

   (a) immediate relief in the form of a stay of proceedings; and

   (b) the appointment of FTI Consulting Canada ULC ("**FTI Canada**") as Monitor of the Applicants.

6. It is the intention of the Applicants to return to Court within a short period of time to seek approval for debtor in possession financing ("**DIP Financing**") from the

Applicants' primary secured lenders (the "**DIP Lenders**"), on behalf of whom JP Morgan Chase Bank N.A. ("**JP Morgan**") is acting as the administrative agent (in such capacity, the "**DIP Administrative Agent**") and to seek approval of restructuring powers for the Applicants that will enable them to obtain a going concern solution with the assistance of the Monitor.

7. In the view of the Applicants, these proceedings present the best opportunity for the Applicants to maximize value for their stakeholders and seek a viable going concern solution.

**Business Overview**

8. The Applicants comprise, together with Indalex U.S. and their related affiliates (collectively, the "**Indalex Group**"), the second largest aluminum extruder in the United States and Canada.

9. Indalex Canada is a Canadian corporation and the entity through which the Indalex Group operates its Canadian business. It is the parent company of Indalex BC, a British Columbia corporation, 632, a Canadian corporation, and Novar, an Ontario corporation, none of which are operating entities.[1]

10. Indalex Canada is a direct wholly-owned subsidiary of its U.S. parent, Indalex Holding, which is in turn a wholly-owned subsidiary of Indalex Finance.

[1] Indalex BC owns the property on which Indalex Canada operates in Port Coquitlam, B.C. 632 owns the property on which Indalex Canada operates in Ontario. Novar is a dormant company with no assets or liabilities other than the guarantee of Indalex Canada's indebtedness to JP Morgan.

11. Indalex Finance is beneficially owned by Sun Capital Partners III, L.P., Sun Capital Partners, III QP, LP, Sun Capital Partners IV, LP, Sun Indalex, LLC, as well as certain management co-investors. Attached hereto as Exhibit "**A**" is a copy of the corporate chart.

12. Approximately 94% of the products of the Indalex Group are customized, made-to-order aluminum extrusions. Aluminum is a durable, light weight metal and can be strengthened through the extrusion process, which involves pushing aluminum through a die and forming it into strips, which can then be customized for a wide array of end-user markets.

13. Indalex Canada produces a portion of the raw material used in the extrusion process, called aluminum extrusion billets, through its casting division, Indalloy, located in Toronto. It also processes the raw extrusion billets into extruded product at its Canadian extrusion plants, for sale to end-users.

14. The end-user markets include transportation, residential building and construction, electrical and cable, commercial building and construction, consumer durables, machinery, and equipment. In addition, the Indalex Group offers a wide array of services, including fabrication, painting, and anodizing.

15. The Indalex Group has in excess of 3,600 customers worldwide, including a broad spectrum of national, regional, and local accounts. In 2008, Indalex Canada accounted for approximately 32% of the Indalex Group's total sales to third parties.

16. Indalex Canada supplies to three major groups of customers:

(a) finished extruded product to Canadian customers directly (approximately 70% of Indalex Canada's sales in 2008);

(b) finished extruded product to U.S. customers directly (approximately 30% of Indalex Canada's sales in 2008); and

(c) billets to Indalex U.S. for use in its extrusion processing. In 2008, Indalex Canada supplied Indalex U.S. with 20% of its aluminum extrusion billet requirements.

**Operational Facilities**

17. The Indalex Group operates eleven extrusion facilities and billet cast houses throughout the United States, Canada and China. The United States operations are run primarily out of six facilities, with headquarters located in Lincolnshire, Illinois.

18. Six of the U.S. facilities are operational. The Indalex Group also has five facilities in the U.S. which are not currently operating, due to low demand.

19. The Canadian operations are run out of five Canadian facilities, located in Port Coquitlam, B.C.[2], Calgary, Alberta[3], Montreal, Quebec[4], Toronto, Ontario[5], and

[2] 1765 Coast Meridian Road, Port Coquitlam, B.C.
[3] 3016 58th Avenue, S.E., Calgary, AB
[4] 325 Rue Avro, Point Claire, Quebec
[5] 7 Alloy Court, Toronto, ON

Mississauga, Ontario[6], with its headquarters located at 5675 Kennedy Road, Mississauga, Ontario. All of these facilities are currently operating.

20. Indalex Canada's business is not an independent, stand alone operation. It is fully integrated with, and mutually interdependent with, the larger North American enterprise, sharing financial resources, management services, infrastructure, suppliers and customers. This integration allows Indalex Canada to access greater operational support and allows its customers to gain logistics benefits and dual sourcing capability. As noted above, Indalex U.S. is heavily dependent, in turn, on the supply of raw material inventory from Indalex Canada.

**Current Status**

21. The Applicants' profitability depends, in large part, on the varying economic and other conditions of the end-user markets they serve. All of the end-user markets the Applicants serve are subject to volatility. The demand for the Applicants' products has declined by approximately 35% since 2006 due to economic conditions which have negatively impacted this demand, the decline in the U.S. housing market, a decline in purchasing and consumer confidence, and an increase in fuel and energy prices and other input prices. This impact has been compounded by a nearly 50% decline in aluminum prices since July of 2008.

22. The lower demand has negatively impacted Indalex Canada's shipment volume and operating profitability. The decline in the price of aluminum has subjected the Indalex Group to margin calls on metal hedging contracts and has restricted

[6] 5675 Kennedy Road, Mississauga, ON

the ability of Indalex Canada to borrow cash to fund operations through the down-cycle.

23. As a result of difficulties in connection with a decline in demand for its products arising from the pervasive economic crisis impacting Indalex Canada's key customers and a decline in the price of aluminum, Indalex Canada is running out of cash and is facing an immediate liquidity crisis. The Applicants are insolvent.

24. Suppliers have stopped supplying on credit, including Indalex Canada's main supplier of aluminum, Alcan. Certain suppliers have discontinued supply altogether. Indalex Canada's other main supplier of aluminum, Alcoa Inc., commenced legal proceedings against Indalex U.S. in the State of Illinois without notice to collect amounts outstanding and owing to it by Indalex U.S. On February 24, 2009, Alcoa obtained judgment without notice against Indalex U.S. in the amount of approximately U.S.$6 million. Alcoa then executed on the judgment restricting Indalex U.S.'s ability to make disbursements, including to critical suppliers. This action was a factor precipitating the need to commence the Chapter 11 Proceedings on an emergency basis.

25. Alcoa was also a supplier to Indalex Canada. On March 27, 2009, it issued a demand letter against Indalex Canada for US$2.6 million alleged to be owing for payment arrears and threatened to commence legal action in Ontario.

26. On March 27, 2009, the provider of Indalex Canada's Group Insurance Policies, Great West Life Assurance Company, issued a termination notice, resulting from

alleged premium arrears in the approximate amount of US$720,000. The termination notice is effective as of April 6, 2009.

27. The Applicants are also in default to their Revolving Lenders (as defined below), for whom JP Morgan is the administrative agent (in such capacity, the "**Administrative Agent**"). The Applicants have entered into an agreement entitled Amendment No. 2, Waiver and Agreement (the "**Forbearance Agreement**") with Indalex U.S., the Revolving Lenders, the Term Lender and the Administrative Agent as of March 6, 2009, pursuant to which the Revolving Lenders have agreed to temporarily waive certain conditions to funding set forth in the Amended Credit Agreement (as defined below) and which permits continued use of the Revolving Credit Facility (as defined below) on certain conditions.

28. In summary, the Applicants need relief under the CCAA to prevent any further precipitous creditor action and to give the Applicants the opportunity to secure additional financing and identify a going concern solution. In addition, the integrated nature of the business of the Applicants with Indalex U.S., and the integrated nature of their financing, discussed below, now make the commencement of these proceedings in Canada necessary in order to maintain coordination and stability.

29. With the assistance of FTI Canada, the proposed Monitor, and in coordination with the Chapter 11 Proceedings, the Applicants intend to commence a process to identify a going concern solution, with the goal of preserving the business,

protecting and preserving the livelihood of employees, and maximizing stakeholder value (the "**Restructuring Process**").

30. It is intended that the Indalex Group will continue operations as a going concern during these CCAA proceedings.

**Financial Position**

31. Copies of Indalex Canada's interim internal financial statements for the month ended February 2009 and December 2008 are attached hereto as Exhibit "**B**".

**Assets**

32. The Company's assets, as disclosed in its interim internal financial statements as of February 28, 2009, consist of the following:

| Current Assets: | (Canadian dollars in thousands) |
|---|---|
| Cash and cash equivalents | $ 404 |
| Receivable from affiliates | $ 52,361 |
| Receivables, net | $ 25,013 |
| Inventories, net | $ 10,324 |
| Prepaids/Other current assets | $ 2,577 |
| Total current assets | $ 90,679 |
| Capital | $ 98,086 |
| Total assets | $188,765 |

The foregoing figures represent book value of the Company's assets.

33. As noted above, the Applicants own the real property on which their facilities are located, at 5675 Kennedy Road, Mississauga, Ontario, 7 Alloy Court, Toronto,

Ontario, 3016 58th Avenue S.E., Calgary, Alberta, 1765 Coast Meridian Road, Port Coquitlam, B.C., and 325 Rue Avro, Point Claire, Quebec.

34. Indalex Canada is the registered owner of some of the intellectual property relating to the manufacturing processes used by the Indalex Group.

**Secured Debt of the Company**

35. As of December, 2008, the Indalex Group, collectively, had existing secured indebtedness in the approximate aggregate amount of $305.8 million pursuant primarily to a certain Revolving Credit Facility, an Initial Term Loan, an Incremental Term Loan, and Senior Secured Notes, discussed below.

*Revolving Credit Facility*

36. Credit has been provided by certain secured lenders (the "**Revolving Lenders**") pursuant to an Amended and Restated Credit Agreement dated May 21, 2008, among the Applicants, Indalex U.S., the Revolving Lenders, Sun Indalex, LLC (the "**Term Lender**") and the Administrative Agent (the "**Amended Credit Agreement**"). The Amended Credit Agreement amended certain terms to an original credit agreement dated as of February 2, 2006.

37. Pursuant to the Amended Credit Agreement, Indalex Holding had access to a U.S. $200 million revolving credit facility (the "**Revolving Credit Facility**"). Up to $80 million of the Revolving Credit Facility was available to Indalex Canada pursuant to a revolving credit sub-facility (the "**Sub-Facility**").

38. The funds available to Indalex Canada under the Sub-Facility could not exceed a borrowing base comprised of eligible accounts receivable, inventory, machinery and equipment and real property of Indalex Canada and the other Applicants, subject to an aggregate sub-cap of $80 million and subject to a further aggregate total cap, when taken together with the amounts borrowed by Indalex U.S., of $200 million.

39. As of March 31, 2009, the total balance due on the Revolving Credit Facility was approximately U.S.$60 million. The amount owing by the Applicants under the Sub-Facility, as of March 31, 2009 is approximately CDN$26,700,000.

40. The obligations of Indalex Canada under the Amended Credit Agreement are guaranteed by Indalex Holding (one of the US debtors), and its U.S. subsidiaries, as well as the three other Canadian entities, Indalex BC, 632, and Novar.

41. Prior to entering into the Forbearance Agreement, the obligations of Indalex Finance (the US borrower) under the Amended Credit Agreement were guaranteed by Indalex Holding and any U.S. subsidiary of Indalex Holding, only.

42. Indalex Canada's obligations under the Amended Credit Agreement are secured in Canada by a Security Agreement dated February 2, 2006 (the "**Security Agreement**"), two Deeds of Hypothec dated February 2, 2006, together with certain other debentures, pledge agreements, and security documents securing the personal and real property of the Applicants[7]. The Security Agreement and one of

[7] including a Canadian Trade Mark Security Agreement, a collateral bond issued in favour of JP Morgan, a Pledge Agreement, a Debenture in the amount of $200,000,000 in respect of 7 Alloy Court, Toronto,

the Deeds of Hypothec were executed by 6461948 Canada Inc. and Indalex Canada; the other Deed was executed by 6461948 Canada Inc. only. On February 2, 2006, 6461948 Canada Inc. and Indalex Canada amalgamated (as described below). Attached hereto as Exhibit "C" is a copy of the Security Agreement. Attached hereto as Exhibit "D" are copies of the Deeds of Hypothec.

43. The security provided by the Applicants is registered under the relevant personal property security registries in Ontario, Quebec, British Columbia, and Alberta. Attached hereto as Exhibit "E" is a copy of a summary of PPSA registrations against the Applicants for Ontario, British Columbia, Alberta, and Quebec.

*March 6, 2009 Forbearance Agreement*

44. As noted above, on March 6, 2009, Indalex U.S. and the Applicants entered into the Forbearance Agreement with the Administrative Agent, the Term Lender and the Revolving Lenders.

45. The Forbearance Agreement, as amended, as it applies to the Applicants, provides a temporary waiver of certain existing events of default under the Amended Credit Agreement that terminates and expires on April 3, 2009, or on the

---

Ontario dated February 2, 2006, a General Assignment of Leases and Rents re 7 Alloy Court, Toronto, Ontario, a trustee and beneficial owner agreement re 7 Alloy Court, Toronto, Ontario, a Debenture in the amount of $200,000,000 in respect of 5675 Kennedy Road, Mississauga, Ontario dated February 2, 2006, a general assignment of leases and rents re 5675 Kennedy Road, Mississauga, Ontario, a trustee and beneficial owner agreement re 5675 Kennedy Road, Mississauga, Ontario, a Debenture in the amount of $200,000,000 re 3016 58th Avenue S.E. Calgary, Alberta, dated February 2, 2006, an assignment of rents re 3016 58th Avenue S.E., Calgary, Alberta, a Mortgage and debenture in the amount of $200,000,000 re 1765 Coast Meridian Road, Port Coquitlam, B.C. dated February 2, 2006, a general assignment of rents re 1765 Coast Meridian Road, Port Coquitlam, B.C. and a beneficiary authorization and charge agreement re 1765 Coast Meridian Road, Port Coquitlam, B.C.

occurrence of any other default under the Amended Credit Agreement, or on the acceleration or enforcement of the Senior Secured Notes (described below).

46. Under the Forbearance Agreement, the aggregate revolving commitments under the Revolving Credit Facility have been reduced from $200 million to $150 million.

47. In consideration for the forbearance arrangements set out in the Forbearance Agreement, the provision of additional borrowings in the amount of U.S.$1.5 million for Indalex Canada and U.S.$4.5 million for Indalex U.S., and the continued provision of credit pursuant to the Amended Credit Agreement which has enabled the Applicants to continue in business and honour trade obligations and obligations to employees to date, the Applicants agreed under the Forbearance Agreement to guarantee the obligations of Indalex U.S. under the Amended Credit Agreement (the "**Pre-Filing Guarantee**"). Attached hereto as Exhibit "F" is a copy of the Forbearance Agreement.

48. The Pre-Filing Guarantee was agreed to by Indalex Canada in order to obtain continued support from the Revolving Lenders for Indalex Canada. Without the provision of this support, Indalex Canada was at risk of losing its operating financing and its ability to continue as a going concern.

*Term Loans*

49. The Amended Credit Agreement provided for, among other things, the ability of Indalex Holding to borrow $15 million U.S. from Sun Indalex, LLC (the "**Term**

**Lender**"). the Amended Credit Agreement was then further amended on November 25, 2008 to provide for a further US$15 million (collectively, the "**Term Loans**").

50. None of the Applicants are borrowers under the Term Loans and neither of the Term Loans are guaranteed by the Applicants.

*Secured Notes*

51. On February 2, 2006, Indalex Holding issued U.S. $270 million of 11.5% second priority senior secured notes (the "**Senior Secured Notes**"), which mature in 2014, and are guaranteed by the U.S. subsidiaries. The Senior Secured Notes are not guaranteed by the Applicants.

**Other Secured Creditors**

52. The Applicants have the following secured creditors who have registered security against some or all of them:

(a) Woodbine Truck Centre Ltd. o/a Woodbine Indealease;

(b) NRB Inc.;

(c) GE Canada Leasing Services Company;

(d) Citicorp Vendor Finance, Ltd.;

(e) VFS Canada Inc.;

(f) Mr. Forklift;

(g) De Lage Landen Financial Services Canada Inc.;

(h) Penske Truck Leasing Canada Inc.;

(i) DCFS Canada Corp.;

(j) CIT Financial Ltd.;

(k) Liftcapital Corporation;

(l) PHH Vehicle Management Services Inc.; and

(m) Ikon Office Solutions Inc.

These registrations all appear to relate to specific equipment or vehicles.

**Unsecured Liabilities**

53. Indalex Canada has approximately U.S.$19.8 million of trade liabilities as of March 23, 2009. Approximately U.S. $9.5 million of this is overdue. As noted above, most trade suppliers are no longer providing credit terms to Indalex Canada and some have suspended supply.

54. Indalex Canada also has an intercompany account with Indalex Inc., a Delaware sister company of Indalex Canada for the supply of goods. As of March 23, 2009, Indalex Canada owed Indalex Inc. the amount of approximately U.S. $5.3 million and Indalex Inc. owed Indalex Canada for the supply of goods in the amount of approximately U.S. $39 million.

55. Indalex Canada is also indebted to Indalex Holding pursuant to an amended and restated promissory note issued May 21, 2008, in the amount of $40,000,000 (the "**Amended and Restated Promissory Note**").

56. The Amended and Restated Promissory Note relates to financing used for the acquisition of Indalex Canada in 2006. Indalex Canada was acquired by a numbered company, 6461948 Canada Inc., which borrowed funds from Indalex Holding in the amount of approximately $182 million to finance the purchase. Subsequent to the acquisition, 6461948 Canada Inc. amalgamated with Indalex Canada, and the liability was thereby assumed by Indalex Canada. The original indebtedness has been reduced from time to time with payments to Indalex Holding. The Amended and Restated Promissory Note was amended and restated in 2008 to reflect the remaining balance owing of $40,000,000. Attached hereto as Exhibit "**G**" is a copy of the Amended and Restated Promissory Note.

**Employees of the Business**

57. Indalex Canada has approximately 767 employees, of which 646 are hourly and 121 are salaried. 505 of these employees are currently active. Hourly employees are represented by six different locals of the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (the "**U.S.W.**") as follows:

(a) Local 6034: Collective Agreement dated May 1, 2007 to April 20, 2011;

(b) Local 9042: Collective Agreement dated January 12, 2008 to January 11, 2011;

(c) Local 13571-20: Collective Agreement dated December 1, 2005, expired November 30, 2008;

(d) Local 7785: Collective Agreement extended to and expired on December 22, 2008;

(e) Local 2952: Collective Agreement dated October 1, 2006 to September 30, 2011; and

(f) Local 7785-01: Draft Collective Agreement dated July 7, 2008.

58. Indalex Canada's payroll in Canada is approximately $469,514 per week for hourly employees, $389,831 bi-weekly for salaried employees and $19,792 monthly for benefits under the Supplementary Plan (as defined below). Payroll is administered through payroll services provided by ADP. It will have severance and termination obligations to employees in the event that the Applicants are unsuccessful in respect of its Restructuring Process and it is necessary to liquidate the assets of the Applicants for the benefit of creditors.

**Pension Obligations**

59. Indalex Canada is the sponsor and administrator of two registered pension plans and one non-registered supplemental pension plan. It also contributes to one

multi-employer pension plan and maintains a group registered retirement savings plan and a deferred profit sharing plan.

*Registered Pension Plans*

60. Indalex Canada is the sponsor and administrator of the following two registered pension plans:

(a) The Retirement Plan for Salaried Employees of Indalex Canada and Associated Companies, registered with the Financial Services Commission of Ontario ("**FSCO**") and the Canada Revenue Agency ("**CRA**") under Registration No. 0533646 (the "**Salaried Plan**"); and

(b) The Retirement Plan for the Executive Employees of Indalex Canada and Associated Companies, registered with FSCO and CRA under Registration No. 0455626 (the "**Executive Plan**").

61. The Salaried Plan, which consists of defined benefit and defined contribution components, was fully terminated effective December 31, 2006 and thus no current employees will receive benefits under the Salaried Plan. Indalex Canada was continuing to fund the wind-up deficiency under the Salaried Plan which, as at December 31, 2007, was $2,252,900. There are currently 34 retirees receiving benefits under the Salaried Plan.

62. The Executive Plan is a defined benefit pension plan which was closed to new members effective September 1, 2005. As at January 1, 2008, the Executive Plan had a funding deficiency on an ongoing basis of $2,535,100; a funding deficiency

on a solvency basis of $1,082,800; and a funding deficiency on a wind-up basis of $2,996,400. There is only one current employee on long-term disability entitled to receive benefits under the Executive Plan. There are currently 14 retirees receiving benefits under the Executive Plan.

*Supplemental Pension Plan*

63. Indalex Canada also maintains the Supplementary Retirement Plan for Executive Employees of Indalex Canada and Associated Companies (the "**Supplementary Plan**"), which is an unfunded and non-registered supplemental pension plan for certain members of the Executive Plan. The Supplementary Plan is also closed to new members. Benefits under the Supplementary Plan are paid out of the general revenues of the applicable executive's employer. As at December 31, 2008, the liabilities under the Supplementary Plan were $2,966,244, based on the present value of the projected benefit payments.

*Multi-Employer Pension Plan*

64. In respect of its unionized employees, the Indalex Group contributes to the Canada-Wide Industrial Pension Plan ("**CWIPP**"), which is a multi-employer registered pension plan. During 2008, the Indalex Group contributed approximately $1,121,516 to CWIPP. Indalex Canada is current on all payments to the CWIPP.

*Group Registered Retirement Savings Plan and Deferred Profit Sharing Plan*

65. Indalex Canada maintains a group registered retirement savings plan ("**GRRSP**") for its union employees at the Port Coquitlam facility and a deferred profit sharing plan ("**DPSP**") for its non-union employees. For 2008, employer contributions to the GRRSP were $128,107 and employer contributions to the DPSP were $439,970. Indalex Canada is current on all contributions to the GRRSP and DPSP.

**Priority Statutory Liabilities**

66. The Applicants have maintained their obligations for payroll, source deductions, current pension liabilities, and GST, and are not in arrears in respect of these items.

**Payments**

67. A projected cash flow for the Applicants has been prepared for the purposes of these proceedings, from the week ending April 10 through the week ending May 1, 2009 (the "**Projected Cash Flow**"). A copy of the Projected Cash Flow is attached hereto as Exhibit "**H**". During the period of the CCAA process, the Applicants intend to make current payments as set out in the draft Initial Order and Projected Cash Flow.

**Financing During the Process**

68. On March 23, 2009, Indalex US sought and obtained, with the consent of the Revolving Lenders, approval from the US Bankruptcy Court of an Interim Order Authorizing the Use of Pre-petition Lenders' Cash Collateral (the "**Cash**

**Collateral Order**"). The Cash Collateral Order permits Indalex US to operate in reliance on its existing cash receipts, in accordance with a budget negotiated and settled with the Revolving Lenders. Attached hereto as Exhibit "I" is a copy of the Cash Collateral Order.

69. The Indalex Group and the Revolving Lenders have been working diligently since prior to the Chapter 11 filing to negotiate the terms on which DIP Financing will be provided to the Indalex Group to finance its operations through the U.S. proceedings and these proceedings. The DIP Financing negotiations have not been finalized, but all parties continue to work diligently towards finalizing matters expeditiously. In the meantime, the Applicants have requested a further extension of the Forbearance Agreement so that the Applicants will be able to continue to borrow under their existing facilities. It is anticipated the extension of the Forbearance Agreement will be provided in advance of the issuance of the Initial Order. As a condition of and in consideration for the forbearance, the Applicants have agreed to provide that the Revolving Lenders are unaffected by the stay of proceedings under the Initial Order, pending a return to court to seek approval of the proposed DIP Financing.

70. Once matters have stabilized, and the DIP Financing has been negotiated, the Applicants anticipate returning to Court next week to seek the approval of the DIP Financing. Indalex US similarly anticipates seeking approval of DIP Financing in respect of its operations.

**Cash Management System**

71. The Applicants currently have in place a cash management system to facilitate the flow of receivables and disbursements in connection with the Revolving Credit Facility. Indalex Canada is a party to a Blocked Accounts Agreement dated as of May 31, 2006 with JP Morgan and Royal Bank of Canada ("**RBC**"), which provides for payment of all receivables into a "lock-box" maintained by RBC. At the end of each business day, cash in the lock-box is remitted to collection accounts maintained by JP Morgan. The cash is then re-advanced to the Applicants in accordance with the availability provided for under the Revolving Credit Facility. It is contemplated that this cash management system will continue to remain in place until the DIP Financing negotiations are complete.

**The Monitor**

72. FTI Consulting, Inc. ("**FTI U.S.**") was retained by Indalex U.S. on or about February 20, 2009, to assist it with identifying strategies to deal with its liquidity crisis. FTI Canada commenced providing assistance to Indalex Canada during the week commencing March 9, 2009. Subject to obtaining approval of the U.S. Bankruptcy Court, Keith Cooper of FTI U.S. has been appointed by Indalex U.S. as Chief Restructuring Officer of Indalex U.S., and will continue to provide financial and strategic advice to Indalex U.S. subject to approval by the U.S. Court.

73. FTI Canada has agreed to act as Monitor in these proceedings. Due to their familiarity with the operational and financial aspects of the Indalex Group business, FTI Canada is well placed to act as Monitor. I understand that while the

Monitor is able to provide advice and assistance to the Applicants, FTI Canada, once appointed, is an independent officer of, is answerable to, and takes direction from, this Court, and not from the Indalex Group.

**Directors and Officers**

74. In order to continue to carry on business during these proceedings, the Applicants require its directors and officers (together with the Company's former directors and officers, the "**Directors**") to remain committed. Although the Applicants intend to comply with applicable laws with respect to matters affecting it, including, without limitation, the payment of wages, employee source deductions, vacation pay, GST, provincial sales tax and regulatory deemed trust requirements, the failure to successfully complete a Restructuring Process may result in significant personal liabilities for Directors.

75. As such, the Applicants intend to indemnify the Directors for such potential liabilities, and request a charge (the "**Directors' Charge**") in the amount of $3.3 million to indemnify the Directors in respect of any such liabilities as they may incur in these proceedings.

**Administration Charge**

76. In order to protect the fees and expenses of the Monitor, counsel to the Monitor, and counsel to the Applicants, the Applicants seek a charge in favour of these professionals to secure payments of their reasonable fees and disbursements incurred both prior to filing and after (the "**Administration Charge**") in the

amount of $500,000. It is requested that the Administration Charge have first priority against the property of the Company.

**Conclusion**

77. The Applicants are insolvent and are facing an immediate financial crisis which jeopardizes their ability to continue as a going concern enterprise. The Initial Order sought will provide an immediate stay and an opportunity for the Applicants to pursue the Restructuring Process in concert with proceedings in the United States that will hopefully preserve the business for the benefit of all stakeholders. The Applicants intend to return to Court prior to the expiry of the initial stay of proceedings to seek approval of DIP Financing, once these negotiations have been completed.

78. This Affidavit is therefore made in support of the Applicants' application for an Order under the CCAA and for no other or improper purpose.

**SWORN BEFORE ME** at the City of Lincolnshire, in the State of Illinois this 3rd day of April, 2009

Marcia J. Goldin

OFFICIAL SEAL
MARCIA J. GOLDIN
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES MAY. 20, 2012

**TIMOTHY R.J. STUBBS**

This is Exhibit "H" referred to in
the Affidavit of Timothy R.J. Stubbs

Subscribed and sworn to before me
this 3rd day of April, 2009

Marcia Goldin
Notary Public

OFFICIAL SEAL
MARCIA J. GOLDIN
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES MAY. 20, 2012

Indalex Limited
Indalex Holdings (B.C.) Ltd.
6326765 Canada Inc.
Novar Inc.

## Consolidated Cash Flow Forecast

| Week Ending | 4/10/2009 US$000 | 4/17/2009 US$000 | 4/24/2009 US$000 | 5/1/2009 US$000 | Total US$000 |
|---|---|---|---|---|---|
| **Receipts:** | | | | | |
| Accounts Receivable | 4,372 | 4,303 | 4,109 | 4,605 | 17,388 |
| Other | 64 | 290 | 0 | 0 | 354 |
| **Total Receipts** | **4,436** | **4,593** | **4,109** | **4,605** | **17,742** |
| **Disbursements:** | | | | | |
| Raw Materials - Metals | 2,740 | 2,826 | 2,826 | 2,714 | 11,105 |
| Raw Materials - Other Materials | 115 | 118 | 118 | 114 | 464 |
| Payroll | 262 | 533 | 262 | 533 | 1,589 |
| Benefits | 95 | 194 | 95 | 194 | 578 |
| Operating Expenses | 490 | 490 | 490 | 553 | 2,023 |
| GST | 0 | 0 | 0 | 354 | 354 |
| Capex - Tool & Die | 53 | 53 | 53 | 53 | 211 |
| Capex - Other | 0 | 0 | 0 | 0 | 0 |
| Bank Fees & Interest | 0 | 0 | 0 | 0 | 0 |
| Legal & Professional Fees | 210 | 110 | 60 | 110 | 490 |
| **Total Disbursements** | **3,964** | **4,324** | **3,903** | **4,625** | **16,816** |
| **Excess of Receipts over Disbursements** | **472** | **269** | **205** | **(20)** | **926** |
| **Cumulative Net Cash Flow** | **472** | **741** | **947** | **926** | **926** |

# TAB B

Court File No. CV-09-8122-00CL

**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.

Applicants

**AFFIDAVIT OF PATRICK LAWLOR**
(Sworn April 8, 2009)

I, Patrick Lawlor, of the City of Lincolnshire, in the State of Illinois, United States of America, **MAKE OATH AND SAY AS FOLLOWS:**

**INTRODUCTION**

1. I am the Chief Financial Officer of Indalex Limited ("**Indalex Canada**"), Indalex Holdings (B.C.) Ltd. ("**Indalex BC**"), 6326765 Canada Inc. ("**632**"), and Novar Inc. ("**Novar**") (collectively, the "**Applicants**"), and as such have knowledge of the matters deposed to in this affidavit. Where this affidavit is not based on my direct personal knowledge, it is based on information and belief and I verily believe such information to be true.

2. As noted in the Affidavit of Timothy R.J. Stubbs sworn April 3, 2009 (the "**Stubbs Affidavit**"), a copy of which is attached hereto (without Exhibits) as Exhibit "**A**", these proceedings have been brought in conjunction with a parallel proceeding commenced urgently, by way of a voluntary petition filed on March 20, 2009, in the United States

Bankruptcy Court for the District of Delaware (the "**U.S. Bankruptcy Court**") by the Applicants' U.S. direct and indirect parents, Indalex Holdings Finance, Inc. ("**Indalex Finance**"), and Indalex Holding Corp. ("**Indalex Holding**"), and certain of their U.S. subsidiaries (collectively with Indalex Finance and Indalex Holding, "**Indalex U.S.**") pursuant to Chapter 11 of the United States Bankruptcy Code (the "**Chapter 11 Proceedings**").

3. An Initial Order was issued in respect of the Applicants at the hearing of this matter on April 3, 2009. Attached hereto as Exhibit "**B**" is a copy of the Initial Order.

4. On the hearing of the initial Application in these proceedings on April 3, 2009, the Applicants advised the Court that it was their intention to return to Court within a short period of time to:

   (a) seek approval for debtor in possession financing ("**DIP Financing**") from the Applicants' primary secured lenders (in such capacity the "**DIP Lenders**"), on behalf of whom JPMorgan Chase Bank N.A. ("**JPMorgan**") is acting as the administrative agent (in such capacity, the "**DIP Administrative Agent**"), together with a Court ordered charge as security for the DIP Financing (the "**DIP Lenders' Charge**"), and

   (b) to seek approval of restructuring powers for the Applicants that will enable them to obtain a going concern solution with the assistance of the Monitor.

5. The Initial Order was obtained on the basis that, pending the finalization of terms of the proposed DIP Financing, the DIP Lenders in their capacity as the current secured lenders

of the Applicants (in such capacity, the "**Revolving Lenders**") had agreed to extend the terms of the Forbearance Agreement currently in place (as described below) to April 8, 2009 to permit the Applicants to continue to operate under their existing operating facilities from the Revolving Lenders, as discussed below.

6. The Applicants agreed that pending a return to Court for approval of the DIP Financing, the beneficiaries of the Administration Charge and the Directors' and Officers' Charge (collectively, the "**Charges**") would be fully subordinated to the existing priority of the Revolving Lenders. The parties also agreed that all rights would be reserved by all parties in respect of these priorities, and their priority would be negotiated and determined in the context of negotiating the terms of the DIP Financing. Attached hereto as Exhibit "**C**" is a copy of the endorsement of the Court with respect to the reservation of these rights.

7. The date of April 8, 2009 was set aside by the Court for the return of the hearing in respect of the DIP Financing, and the Charges.

8. Since the hearing on April 3, 2009, the parties have continued their negotiations, and the terms of the proposed DIP Financing have been substantially agreed among the Indalex Group and the DIP Lenders. This Affidavit is therefore made in support of a motion for an Amended and Restated Initial Order which provides for:

   (a) approval of DIP Financing from the DIP Lenders pursuant to a Credit Agreement among the Applicants, Indalex U.S. (the Applicants and Indalex U.S. together, the "**Indalex Group**"), the DIP Lenders and the DIP Administrative Agent

substantially in the form of Exhibit "**D**", subject to such immaterial changes as may be agreed by the parties and shown in advance and consented to by the Monitor (the "**DIP Credit Agreement**");

(b) the ordering of the priorities of the Charges *vis-à-vis* the DIP Lenders' Charge; and

(c) the authorization of restructuring powers for the Applicants that will facilitate a going concern solution, with the assistance of the Monitor.

**PRE-FILING CREDIT FACILITY**

9. A discussion of the Applicants' pre-filing credit facility is set out the Stubbs Affidavit. For ease of reference, that discussion is substantially restated below.

10. To date, credit has been provided to the Indalex Group by the Revolving Lenders pursuant to an Amended and Restated Credit Agreement (the "**Amended Credit Agreement**") dated May 21, 2008, among the Applicants, Indalex U.S., the Revolving Lenders, Sun Indalex, LLC (the "**Term Lender**") and JPMorgan as Administrative Agent (the "**Pre-Filing Administrative Agent**"). The Amended Credit Agreement amended certain terms to an original credit agreement dated as of February 2, 2006. Attached hereto as Exhibit "**E**" is a copy of the Amended Credit Agreement.

11. Pursuant to the Amended Credit Agreement, Indalex Holding had access to a U.S. $200 million revolving credit facility (the "**Revolving Credit Facility**"). Up to $80 million of

the Revolving Credit Facility was available to Indalex Canada pursuant to a revolving credit sub-facility (the "**Sub-Facility**").

12. The funds available to Indalex Canada under the Sub-Facility could not exceed a borrowing base comprised of a percentage of eligible accounts receivable, inventory, machinery and equipment and real property of Indalex Canada and the other Applicants, subject to an aggregate sub-cap of $80 million and subject to a further aggregate total cap, when taken together with the amounts borrowed by Indalex U.S., of $200 million.

13. As of April 6, 2009, the total balance due on the Revolving Credit Facility was approximately U.S.$48.4 million. The amount owing by the Applicants under the Sub-Facility, as of April 6, 2009 is approximately CDN$20.9 million.

14. The obligations of Indalex Canada under the Amended Credit Agreement are guaranteed by Indalex Finance, Indalex Holding, and their U.S. subsidiaries, as well as the three other Canadian entities, Indalex BC, 632, and Novar.

15. Prior to entering into the Forbearance Agreement, the obligations of Indalex Holding (the US borrower) under the Amended Credit Agreement were guaranteed by Indalex Finance and any U.S. subsidiary of Indalex Holding, only.

16. Indalex Canada's obligations under the Amended Credit Agreement are secured in Canada by a Security Agreement dated February 2, 2006 (the "**Security Agreement**"), two Deeds of Hypothec dated February 2, 2006, together with certain other debentures, pledge agreements, and security documents securing the personal and real property of the

Applicants[1]. To clarify the Stubbs Affidavit, the Security Agreement was executed by 6461948 Canada Inc. and Indalex Canada; one Deed was executed by 6461948 Canada Inc. and the other Deed was executed by Indalex Canada. On February 2, 2006, 6461948 Canada Inc. and Indalex Canada amalgamated.

17. The security provided by the Applicants is registered under the relevant personal property security registries in Ontario, Quebec, British Columbia, and Alberta.

**March 6, 2009 Forbearance Agreement**

18. As noted above, on March 6, 2009, Indalex U.S. and the Applicants entered into the Forbearance Agreement with the Pre-Filing Administrative Agent, the Term Lender and the Revolving Lenders.

19. The Forbearance Agreement, as amended, as it applies to the Applicants, provides a temporary waiver of certain existing events of default under the Amended Credit Agreement that terminates and expires on April 8, 2009 (as extended), or on the occurrence of any other default under the Amended Credit Agreement, or on the acceleration or enforcement of certain senior secured notes issued by Indalex U.S.

---

[1] including a Canadian Trade Mark Security Agreement, a collateral bond issued in favour of JPMorgan, a Pledge Agreement, a Debenture in the amount of $200,000,000 in respect of 7 Alloy Court, Toronto, Ontario dated February 2, 2006, a General Assignment of Leases and Rents re 7 Alloy Court, Toronto, Ontario, a trustee and beneficial owner agreement re 7 Alloy Court, Toronto, Ontario, a Debenture in the amount of $200,000,000 in respect of 5675 Kennedy Road, Mississauga, Ontario dated February 2, 2006, a general assignment of leases and rents re 5675 Kennedy Road, Mississauga, Ontario, a trustee and beneficial owner agreement re 5675 Kennedy Road, Mississauga, Ontario, a Debenture in the amount of $200,000,000 re 3016 58th Avenue S.E. Calgary, Alberta, dated February 2, 2006, an assignment of rents re 3016 58th Avenue S.E., Calgary, Alberta, a Mortgage and debenture in the amount of $200,000,000 re 1765 Coast Meridian Road, Port Coquitlam, B.C. dated February 2, 2006, a general assignment of rents re 1765 Coast Meridian Road, Port Coquitlam, B.C. and a beneficiary authorization and charge agreement re 1765 Coast Meridian Road, Port Coquitlam, B.C.

20. Under the Forbearance Agreement, the aggregate revolving commitments under the Revolving Credit Facility have been reduced from $200 million to $150 million.

21. In consideration for the forbearance arrangements set out in the Forbearance Agreement, the provision of additional borrowings in the amount of U.S.$1.5 million for Indalex Canada and U.S.$4.5 million for Indalex U.S., and the continued provision of credit pursuant to the Amended Credit Agreement which has enabled the Applicants to continue in business and honour trade obligations and obligations to employees to date, the Applicants agreed under the Forbearance Agreement to guarantee the obligations of Indalex U.S. under the Amended Credit Agreement (the "**Pre-Filing Guarantee**"). Attached hereto as Exhibit "**F**" is a copy of the Forbearance Agreement.

22. The Pre-Filing Guarantee was agreed to by Indalex Canada in order to obtain continued support from the Revolving Lenders for Indalex Canada. Without the provision of this support, Indalex Canada was at risk of losing its operating financing and its ability to continue as a going concern.

23. When documenting the Forbearance Agreement, the parties did not amend Section 9.20 of the Amended Credit Agreement which provides that notwithstanding any other provision of the Amended Credit Agreement or any other agreement between the parties, the collateral of the Applicants will not secure Indalex U.S. obligations under the Amended Credit Agreement. Nevertheless, and at all times, it was intended by the Applicants to provide the Pre-Filing Guarantee and have the obligations under the Pre-Filing Guarantee be secured by the security granted to the Revolving Lenders.

**DIP FINANCING**

24. Since commencing the Chapter 11 proceedings, Indalex U.S. has been meeting its cash needs through use of its post-filing cash receipts in accordance with the terms of an Interim "Cash Collateral" Order issued by the US Bankruptcy Court on March 23, 2009.

25. Indalex U.S., however, does not have sufficient available sources of working capital and financing to carry on the operation of their businesses without DIP Financing. The Applicants are in the same position. The Applicants' ability to maintain business relationships with their vendors, suppliers and customers, pay their employees, purchase and supply new inventory and otherwise finance their operations is essential to the Indalex Group's continued viability. The Applicants' critical need for financing is immediate; in the absence of DIP Financing, the continued operation of the Applicants' businesses would not be possible. The preservation, maintenance and enhancement of the going concern value of the Applicants are of the utmost significance and importance to a successful reorganization of the Applicants. Since the commencement of the Chapter 11 proceedings and prior to the CCAA proceedings, the Revolving Lenders have provided cash advances to Indalex Canada to enable it to meet payroll and other obligations.

**Alternate Financing**

26. Due to the integrated nature of the Indalex Group's business and the necessity of obtaining DIP Financing on both sides of the border, the Applicants concluded that a single DIP credit facility, for both Indalex US and the Applicants, would provide terms

more favorable than could be achieved through a stand alone Canadian facility, if such a facility could have been achieved at all.

27. Following a search for alternative sources of financing and finding little interest in the marketplace as a result of the credit crisis, the Indalex Group engaged in substantial, arm's-length negotiations with the Revolving Lenders for the provision of DIP Financing that would enable Indalex U.S. and the Applicants to pursue a restructuring through these proceedings and the Chapter 11 Proceedings.

28. The Indalex Group was able to obtain a single competing offer and has reviewed a term sheet offering DIP Financing from this alternate lender (the "**Alternate**"). The term sheet did not provide a viable alternative which would allow the Indalex Group to meet the looming liquidity crisis in the required time frame. In addition, pursuing DIP Financing with the Alternate presented material risk of protracted litigation in connection with the priming DIP charge being sought by the Alternate over the existing security of the Revolving Lenders. In the Indalex Group's view, this dispute would have a destabilizing effect on the Indalex Group's business and undermine its ability to meet its financial challenges in the required timeframe.

**DIP Credit Agreement**

29. As a result of the negotiations with the Revolving Lenders, the Applicants, together with Indalex U.S., have substantially settled on the terms for the provision of DIP Financing with the DIP Lenders, which will permit the Applicants to continue their operations and pursue a going concern solution under the restructuring process that will, if successful,

preserve the business of the Applicants. The Applicants will have access to a sub-facility of the larger availability extended to Indalex U.S.

**The DIP Structure**

30. In both the U.S. and Canada, availability under the Canadian revolving facility and the US revolving facility pursuant to the DIP Credit Agreement, respectively, is a function of borrowing base calculations, reserves and certain availability blocks. One of the principal availability blocks arises from the outstanding exposure under the pre-filing facilities of Indalex US and the Applicants, respectively. These availability blocks are reduced as account receivables owed to the applicable borrowers are collected and applied to reduce the obligations outstanding under the applicable pre-filing facility under the Amended Credit Agreement. Once the receivables are applied, availability increases. I understand that it is contemplated by the DIP Lenders that once the Final Order is issued by the U.S. Bankruptcy Court finally approving the DIP Financing by the U.S. Bankruptcy Court (anticipated to be 30 days after the Interim Order approving DIP Financing), all obligations of Indalex U.S. outstanding under its Revolving Credit Facility under the Amended Credit Agreement will be deemed to be advances under its new facility under the DIP Financing and Indalex U.S.'s obligations under the Amended Credit Agreement will form part of the DIP Financing.

31. Other than as a result of the increased availability under the DIP Credit Agreement, as the DIP Lenders and Revolving Lenders are the same parties, the aggregate principal indebtedness owing to the DIP Lenders does not increase as a result of this structure.

32. In addition, as discussed below, the Initial Order will include language to ensure the pre-filing position of unsecured creditors will not be adversely impacted as a result of the DIP structure described in the paragraphs above.

33. The DIP Financing is to be secured against the assets of the Applicants by the proposed Court-ordered DIP Financing Charge and new contractual security provided by the Applicants.

34. The total maximum additional borrowings, subject to borrowing base restrictions under the DIP Credit Agreement, is approximately $16 million in the aggregate, of which Indalex Canada may borrow up to an additional approximately $3 million, subject to borrowing base restrictions.

**Post-Filing Guarantee**

35. The Applicants agree in the DIP Credit Agreement to guarantee the obligations of Indalex U.S. under the DIP Credit Agreement, which guarantee is to be secured by the Court-ordered DIP Lenders' Charge and by the security package provided by the Applicants to the DIP Administrative Agent and the DIP Lenders for the ratable benefit of the DIP Lenders (the "**Post-Filing Guarantee**"). JPMorgan has advised the Indalex Group that in this credit market the DIP Lenders would not be able to proceed with the DIP Financing on the terms required by the Indalex Group, in the absence of the Post-Filing Guarantee. The Indalex Group has been advised by its professional advisors that given current credit conditions, alternate sources of DIP Financing would not be available without a cross-guarantee.

36. In order to ensure that the collateral position of the unsecured creditors of the Applicants is not potentially prejudiced as a result of the Post-Filing Guarantee from the position they currently occupy, the DIP Lenders have agreed that the Amended and Restated Initial Order will provide that the Post-Filing Guarantee and security provided in connection therewith, as it relates to the amounts of DIP Financing advances up to the amount of the reduction of Indalex U.S.'s pre-filing secured indebtedness under the Revolving Credit Facility will be valid and enforceable to the extent the Pre-Filing Guarantee given by the Applicants under the Forbearance Agreement and/or the security granted in support of that Pre-Filing Guarantee is valid, binding, unavoidable and enforceable.

37. In this way, the unsecured creditors of the Applicants are not placed in any worse position under the provisions of the DIP Financing which allow for the reduction of pre-filing indebtedness of Indalex U.S. under the Revolving Credit Facility, and collateral value available to unsecured creditors is not negatively impacted, by the DIP Financing structure.

**Key Affirmative Covenants**

38. Article V of the DIP Credit Agreement sets out certain key covenants by which the Indalex Group, must abide. These covenants include:

- the delivery of ongoing financial reporting and cash flow forecasts to the DIP Lenders;
- the payment of post-filing "Material Indebtedness";

- restrictions on the use of proceeds to payments associated with the insolvency processes and for working capital needs;

**Events of Default**

39. Article VII of the DIP Credit Agreement set out a number of "Events of Default". These Events of Default include:

- payment defaults;
- the filing of a Plan that does not provide for payment in full of the DIP Financing;
- the failure to obtain the Final DIP Order in the Chapter 11 Proceedings no more than 30 days after the issuance of the Interim Order;
- if the "Loan Guaranty" shall fail to remain in full force or effect or if any action is taken to discontinue or to assert the invalidity or unenforceability of the "Loan Guaranty" (other than any action taken by a third party with respect to the "Loan Guaranty" by the Applicants).

**RESTRUCTURING POWERS**

40. With the approval of the DIP Financing, the Applicants intend to undertake steps to explore all options that are available to them for finding a going concern solution that will preserve the business for the benefit of their stakeholders. In order to do so, the Applicants seek the authority to undertake restructuring steps, as set out in the draft Amended and Restated Initial Order filed herewith.

41. The DIP Credit Agreement also establishes certain milestones and timelines for the alternative strategies that may be pursued by the Indalex Group, including the sale, restructuring, and/or refinancing of the business of the Indalex Group. The Applicants intend to work closely with the Monitor and return to this Court to seek necessary approvals, advice and directions before finalizing any options.

**PRIORITY OF CHARGES**

42. After discussions with the DIP Lenders, it has been agreed that the priorities of the Administration Charge, the D & O Charge and the DIP Lenders' Charge, as among them, will be as follows:

(a) First - Administration Charge (in the amount of US$500,000);

(b) Second - D&O Charge (to the extent of US$1,000,000);

(c) Third - DIP Lenders' Charge; and

(d) Fourth - D&O Charge (to the extent of US$2,300,000).

**RELIEF SOUGHT**

43. This affidavit is therefore sworn in support of a motion to issue an Amended and Restated Initial Order (a) approving the proposed DIP Financing, (b) authorizing certain restructuring powers for the Applicants, and (c) establishing the priorities of the Charges *vis-à-vis* the DIP Lenders' Charge.

**SWORN BEFORE ME** at the City of Lincolnshire, in the State of Illinois this 8th day of April, 2009

Marcia Goldin

OFFICIAL SEAL
MARCIA J. GOLDIN
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES MAY. 20, 2012

Pat Lawlor

**PATRICK LAWLOR**

This is Exhibit "D" referred to in
the Affidavit of Patrick Lawlor

Subscribed and sworn to before me
this 8th day of April, 2009

Marcia Goldin
Notary Public

OFFICIAL SEAL
MARCIA J. GOLDIN
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES MAY. 20, 2012

[CS&M Draft -- 04/07/09]

CREDIT AGREEMENT

dated as of

April 8, 2009,

among

INDALEX HOLDINGS FINANCE, INC., a Debtor and Debtor in Possession,

INDALEX HOLDING CORP., a Debtor and Debtor in Possession,
as Parent Borrower,

INDALEX LIMITED, as an applicant under the Companies' Creditors Arrangement Act,
as Canadian Subsidiary Borrower,

The Domestic Subsidiary Loan Parties Party Hereto, each, a Debtor and Debtor in Possession,

The Foreign Subsidiary Loan Parties Party Hereto,

The Lenders Party Hereto

and

JPMORGAN CHASE BANK, N.A.,
as Administrative Agent

---

JPMORGAN CHASE BANK, N.A.,
as Sole Bookrunner and Sole Lead Arranger

[CS&M Ref. 6701-804]

TABLE OF CONTENTS

ARTICLE IV

Conditions



ARTICLE V

Affirmative Covenants



ARTICLE VI

Negative Covenants

ARTICLE X

Loan Guaranty



SCHEDULES:



EXHIBITS:

CREDIT AGREEMENT dated as of April 8, 2009 (as it may be amended or modified from time to time, this "Agreement"), among INDALEX HOLDINGS FINANCE, INC., a Delaware corporation ("Holdings"), as a debtor and debtor in possession under Chapter 11 of the Bankruptcy Code (as defined below), INDALEX HOLDING CORP., a Delaware corporation and a wholly-owned subsidiary of Holdings (the "Parent Borrower"), as a debtor and debtor in possession under Chapter 11 of the Bankruptcy Code, INDALEX LIMITED, a Canadian corporation and a wholly-owned subsidiary of the Parent Borrower (the "Canadian Subsidiary Borrower"), as an applicant under the CCAA (as defined below), the Domestic Subsidiaries of the Parent Borrower party hereto, each as a debtor and debtor in possession under Chapter 11 of the Bankruptcy Code, the Foreign Subsidiaries of the Parent Borrower party hereto (other than the Canadian Subsidiary Borrower), each as an applicant under the CCAA, the Lenders party hereto and JPMORGAN CHASE BANK, N.A., as Administrative Agent.

WHEREAS, on March 20, 2009 (the "Petition Date"), Holdings, the Parent Borrower and the Parent Borrower's Domestic Subsidiaries each filed a voluntary petition for relief (collectively, the "Bankruptcy Cases") under Chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court");

WHEREAS, on April 3, 2009, the Canadian Subsidiary Borrower and the Canadian Subsidiary Loan Parties made an application for relief (the "Canadian Proceeding") under the Companies' Creditors Arrangement Act (the "CCAA") and were granted an initial order under the CCAA (as amended or restated with the consent of the Required Lenders, the "Canadian Order") by the Ontario Superior Court of Justice (the "Canadian Court");

WHEREAS Holdings, the Parent Borrower and the Domestic Subsidiaries are continuing to operate their respective businesses and manage their respective properties as debtors and debtors in possession under Sections 1107 and 1108 of the Bankruptcy Code;

WHEREAS the Canadian Subsidiary Borrower and certain of the Parent Borrower's other Foreign Subsidiaries are continuing to operate their respective businesses and manage their respective properties pursuant to the provisions of the CCAA and the terms of the Canadian Order;

WHEREAS Holdings and the Parent Borrower have requested that the Lenders provide a secured super-priority credit facility of up to $[•] in order to, among other purposes, fund the continued operation of the businesses of Holdings, the Parent Borrower, the Canadian Subsidiary Borrower and such Subsidiaries; and

WHEREAS the Lenders are willing to make available to Holdings, the Parent Borrower, the Canadian Subsidiary Borrower and such Subsidiaries such credit facility upon the terms and subject to the conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual agreements contained herein and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties hereto agree, subject to the satisfaction of the conditions set forth herein, as follows:

ARTICLE I

Definitions

SECTION 1.01. Defined Terms. As used in this Agreement, the following terms have the meanings specified below:

"ABR", when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Alternate Base Rate.

"Account" has the meaning assigned to such term in each Security Agreement.

"Account Debtor" means any Person obligated on an Account.

"Account Debtor Insolvency Proceeding" means, with respect to any Account Debtor, any proceeding in respect of bankruptcy, insolvency, winding up, receivership, dissolution or assignment for the benefit of creditors under Bankruptcy Law.

"Adequate Protection" means the adequate protection as set forth in the Orders, in form and substance satisfactory to the Administrative Agent, for the Prepetition Agent and the Prepetition Revolving Lenders, including, among other things, (a) replacement Liens on the Collateral that are immediately junior to the Liens securing the Secured Obligations and senior to the Liens securing the obligations under the Prepetition Credit Agreement, (b) superpriority administrative claims under Section 507(b) of the Bankruptcy Code that are immediately junior to the Superpriority Claims of the Administrative Agent and the Lenders and senior to the obligations under the Prepetition Credit Agreement, (c) the payment of the reasonable fees and out-of-pocket expenses incurred by the Prepetition Agent (except that fees and expenses for the Prepetition Agent's professionals shall be limited to reasonable fees of one lead counsel in each relevant jurisdiction (including New York, Delaware and Canada) and one financial consultant) and the continuation of the payment on a current basis of the administration fees that are provided for under the Prepetition Credit Agreement (or any related fee letter) and (d) the payment in cash on a monthly basis of current interest at the Alternate Base Rate plus 9.00% on the outstanding principal amount of Prepetition Indebtedness under the Prepetition Credit Agreement.

"Adjusted Eligible Accounts" means, at any time, the Eligible Accounts of (a) the Parent Borrower and the wholly-owned Domestic Subsidiary Loan Parties at such time, in the case of the Domestic Borrowing Base or (b) the Canadian Subsidiary Borrower and the wholly-owned Canadian Subsidiary Loan Parties at such time, in the case of the Canadian Borrowing Base, in each case minus the applicable Dilution Reserve at such time.

"Adjusted LIBO Rate" means (a) with respect to any Eurodollar Borrowing for any Interest Period, an interest rate per annum equal to (i) the LIBO Rate for such Interest Period multiplied by (ii) the Statutory Reserve Rate or (b) with respect to any ABR Borrowing or U.S. Base Rate Borrowing, for any day, the rate appearing on Reuters BBA Libor Rates Page 3750 (or on any successor or substitute page of such service, or any successor to or substitute for such service, providing rate quotations comparable to those currently provided on such page of such service, as determined by the Administrative Agent from time to time for purposes of providing quotations of interest rates applicable to U.S. Dollar deposits in the London interbank market) at approximately 11:00 a.m., London time, on the date of determination for deposits in dollars with a term commencing on such date equivalent to one month; provided that in the event that such rate is not available at any time for any reason, then the "Adjusted LIBO Rate" with respect to such Borrowing shall be the rate per annum determined by the

Administrative Agent to be the rate at which dollar deposits for delivery on the date of determination in immediately available funds in the amount of $1,000,000 and with a term commencing on such date equivalent to one month would be offered by the Administrative Agent's London branch to major banks in the London interbank eurodollar market at their request at approximately 11:00 a.m., London time, on the date of determination. If at any time the Adjusted LIBO Rate would otherwise be less than 3.50% based on the foregoing methodology, the Adjusted LIBO Rate shall be deemed to be 3.50% at such time notwithstanding the foregoing.

"Administrative Agent" means (a) JPMorgan Chase Bank, N.A., in its capacity as administrative agent for the Lenders hereunder (or, as applicable, such Affiliates thereof as it shall from time to time designate for the purpose of performing its obligations hereunder in such capacity) and (b) with respect to Loans or Borrowings made to the Canadian Subsidiary Borrower, or Letters of Credit deemed issued, pursuant to Section 2.04(a), for the account of the Canadian Subsidiary Borrower or any Foreign Subsidiary, JPMorgan Chase Bank, N.A., Toronto Branch (or, as applicable, such Affiliates thereof as it shall from time to time designate for the purpose of performing its obligations hereunder in such capacity), and, in each case, its successors in such capacity as provided in Article VIII.

"Administration Charge" means the court ordered priority charge granted in the Canadian Order in an amount not to exceed $500,000 and otherwise on terms acceptable to the Administrative Agent to secure (a) all reasonable fees and expenses of Blake, Cassels & Graydon LLP, Canadian legal counsel to the Canadian Loan Parties, (b) all reasonable fees and expenses of the Monitor and the Monitor's legal counsel and (c) all reasonable fees and expenses of other professional advisors of the Canadian Loan Parties incurred with the prior written consent of the Administrative Agent.

"Administrative Questionnaire" means an Administrative Questionnaire in a form supplied by the Administrative Agent.

"Affiliate" means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified; provided, however, that for purposes of Section 6.09, the term "Affiliate" shall also include any person that directly, or indirectly through one or more intermediaries, owns 10% or more of any class of Equity Interests of the Person specified or that is an officer or director of the Person specified.

"Agreement" has the meaning assigned to such term in the preamble to this Agreement.

"Alternate Base Rate" means, for any day, a rate per annum equal to the greatest of (a) the Prime Rate in effect on such day, (b) the Federal Funds Effective Rate in effect on such day plus 0.50% and (c) the Adjusted LIBO Rate in effect on such day plus 1.00%. Any change in the Alternate Base Rate due to a change in the Prime Rate, the Federal Funds Effective Rate or the Adjusted LIBO Rate shall be effective from and including the effective date of such change in the Prime Rate, the Federal Funds Effective Rate or the Adjusted LIBO Rate, as applicable.

"Applicable Percentage" means, at any time with respect to any Revolving Lender, the percentage of the aggregate Revolving Commitments at such time represented by such Lender's Revolving Commitment at such time. If the Revolving Commitments have terminated or expired, the Applicable Percentages shall be determined based upon the Revolving Commitments most recently in effect, giving effect to any assignments of Revolving Exposure that occur after such termination or expiration.

"Applicable Rate" means, for any day, with respect to any (a) Eurodollar Loan, 10.00% per annum, (b) ABR Loan, 9.00% per annum, (c) U.S. Base Rate Revolving Loan, 9.00% per annum, (d) Canadian Base Rate Revolving Loan, 9.00% per annum and (e) Commitment Fee, 1.00% per annum.

"Approved Fund" has the meaning assigned to such term in Section 9.04(b).

"Assignment and Assumption" means an assignment and assumption entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 9.04), and accepted by the Administrative Agent, substantially in the form of Exhibit A or any other form approved by the Administrative Agent.

"Availability" means, at any time, an amount equal to (a) the Total Borrowing Base at such time, minus (b) the aggregate Revolving Exposure at such time.

"Availability Block" means, at any time, an amount equal to the Stub Availability Block at such time, plus the dollar amounts set forth below for such time:

| Time | Amount |
|---|---|
| From the Effective Date through April 17, 2009: | $2,000,000 |
| From April 18, 2009 through May 1, 2009: | $2,500,000 |
| From May 2, 2009 through May 15, 2009: | $3,000,000 |
| From May 16, 2009 through May 29, 2009: | $3,500,000 |
| After May 29, 2009: | $4,000,000 |

"Availability Period" means the period from and including the Effective Date to but excluding the earlier of the Termination Date and the date of termination of the Revolving Commitments.

"Banking Services" means each and any of the following bank services provided to any Loan Party by any Revolving Lender or any of its Affiliates after the Effective Date: (a) commercial credit cards, (b) stored value cards and (c) treasury management services (including controlled disbursement, currency, automated clearinghouse transactions, return items, overdrafts and interstate depository network services).

"Banking Services Obligations" of the Loan Parties means any and all obligations of the Loan Parties, whether absolute or contingent and howsoever and whensoever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor) in connection with Banking Services.

"Bankruptcy Cases" shall have the meaning assigned to such term in the recitals to this Agreement.

"Bankruptcy Code" means Title 11 of the United States Code entitled "Bankruptcy Code", as now and hereinafter in effect, or any successor statute.

"Bankruptcy Court" shall have the meaning assigned to such term in the recitals to this Agreement; provided, however, that "Bankruptcy Court" shall also mean any other court having competent jurisdiction over the Bankruptcy Cases.

"Bankruptcy Law" means the Bankruptcy Code and any other Federal, state or foreign bankruptcy, insolvency, reorganization, receivership or similar law.

"Bidder" has the meaning assigned to it in Section 5.14(b).

"Board" means the Board of Governors of the Federal Reserve System of the United States of America.

"Borrowers" means, collectively, the Parent Borrower and the Canadian Subsidiary Borrower.

"Borrowing" means Loans of the same Class and Type, made, converted or continued on the same date and, in the case of Eurodollar Loans, as to which a single Interest Period is in effect.

"Borrowing Base Certificate" means the Daily Borrowing Base Certificate and/or the Weekly Borrowing Base Certificate, as the context may require.

"Borrowing Request" means a request by the applicable Borrower for a Borrowing in accordance with Section 2.03.

"Business Day" means any day that is not a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to remain closed, provided that (a) when used in connection with a Eurodollar Loan, the term "Business Day" shall also exclude any day on which banks are not open for dealings in U.S. Dollar deposits in the London interbank market, and (b) when used in connection with a Loan made to, or a Letter of Credit deemed issued, pursuant to Section 2.04(a), for the account of, the Canadian Subsidiary Borrower, the term "Business Day" shall also (i) exclude any day on which banks are not open for dealings in deposits in Toronto but (ii) include any day on which banks are open for dealings in deposits in Toronto.

"Canadian Base Rate" means, for any day, the rate of interest per annum equal to the greater of (a) the interest rate per annum publicly announced from time to time by the Administrative Agent as its prime rate in effect on such day at its principal office in Toronto for determining interest rates applicable to commercial loans denominated in Canadian Dollars in Canada and (b) the CDOR Rate plus 0.50%. Any change in such prime rate or the CDOR Rate shall be effective as of the opening of business on the effective date of such change in the prime rate or the CDOR Rate, as applicable. If at any time the Canadian Base Rate would otherwise be less than 4.50% based on the foregoing methodology, the Canadian Base Rate shall be deemed to be 4.50% at such time notwithstanding the foregoing.

"Canadian Benefit Plans" means all employee benefit plans maintained or contributed to by the Borrowers or any Subsidiary that are not Canadian Pension Plans or Canadian Multi-Employer Plans, including all profit sharing, savings, post-retirement, supplemental retirement, retiring allowance, severance, pension, deferred compensation, welfare, bonus, incentive compensation, phantom stock, legal services, supplementary unemployment benefit plans or arrangements and all life, hospitalization

insurance, medical, health, dental and disability plans and arrangements in which Canadian employees or former Canadian employees of the Borrowers or any Subsidiary participate or are eligible to participate.

"Canadian Borrowing Base" means, at any time, the sum of (a) 85% of the U.S. Dollar Equivalent of the aggregate Adjusted Eligible Accounts of the Canadian Subsidiary Borrower and the wholly-owned Canadian Subsidiary Loan Parties at such time, plus (b) the lesser of (i) 85% of the product of (x) the Net Recovery Liquidation Rate in effect (based on the then most recent independent Inventory appraisal in form, scope and substance reasonably satisfactory to the Administrative Agent) at such time multiplied by (y) the U.S. Dollar Equivalent of the aggregate amount of Inventory of the Canadian Subsidiary Borrower and the wholly-owned Canadian Subsidiary Loan Parties at such time (as reported in accordance with the applicable Loan Party's Inventory records) minus any applicable Reserves, and (ii) the sum of (A) 75% of the U.S. Dollar Equivalent of the aggregate cost of Eligible Aluminum Billets and (B) 65% of the U.S. Dollar Equivalent of the aggregate cost of Other Eligible Inventory, in each case of the Canadian Subsidiary Borrower and the wholly-owned Canadian Subsidiary Loan Parties at such time minus any applicable Reserves (in the case of each of subclauses (i) and (ii) of this clause (b), with any Inventory, Eligible Inventory, Eligible Aluminum Billets and Other Eligible Inventory to be valued on a first-in, first-out basis), provided that the aggregate amount determined pursuant to this clause (b) shall not constitute more than 50% of the Canadian Borrowing Base at such time and shall not be greater than $4,000,000, plus (c) the PP&E Component at such time minus (d) without duplication, Reserves with respect to the Canadian Subsidiary Borrower and the wholly-owned Canadian Subsidiary Loan Parties at such time. The Administrative Agent may, in its Permitted Discretion, from time to time, reduce the advance rates set forth above or establish and revise ineligibles and Reserves reducing the amount of Eligible Accounts, Inventory, Eligible Inventory, Eligible Aluminum Billets, Other Eligible Inventory, Eligible Machinery and Equipment and Eligible Real Property used in computing the Canadian Borrowing Base, with any such changes to be effective one Business Day after delivery of notice thereof to the Canadian Subsidiary Borrower and the Lenders (which notice shall describe in reasonable detail the reasons for such changes), provided that any Reserve established by the Administrative Agent shall not apply in respect of items excluded from Eligible Accounts, Eligible Inventory, Eligible Aluminum Billets, Other Eligible Inventory, Eligible Machinery and Equipment and Eligible Real Property pursuant to the definitions thereof or covered by any other Reserve in effect at the time such Reserve is established. The Canadian Borrowing Base at any time shall be determined by reference to the most recent Daily Borrowing Base Certificate delivered to the Administrative Agent (i) in the case of the initial Canadian Borrowing Base, at or prior to the Effective Date or (ii) thereafter, pursuant to Section 5.01(f).

"Canadian Court" has the meaning assigned to such term in the recitals to this Agreement.

"Canadian Dollars" or "C$" means the lawful money of Canada.

"Canadian GAAP" means the generally accepted accounting principles in Canada.

"Canadian Hypothec" means a trust deed of hypothec granted or to be granted by any Loan Party in favor of the Administrative Agent on moveable or immoveable property pursuant to the laws of the Province of Quebec, together with all bonds, debentures and pledges or hypothecs thereof, as amended, supplemented or otherwise modified from time to time.

"Canadian L/C Disbursement" means a payment made by the Issuing Bank pursuant to a Letter of Credit deemed issued, pursuant to Section 2.04(a), for the account of the Canadian Subsidiary Borrower or for the account of any Foreign Subsidiary.

"Canadian L/C Exposure" means, at any time, the sum of (a) the aggregate undrawn amount of all outstanding Letters of Credit deemed issued, pursuant to Section 2.04(a), for the account of the Canadian Subsidiary Borrower and the Foreign Subsidiaries at such time plus (b) the aggregate amount of all Canadian L/C Disbursements that have not yet been reimbursed (including by the making of Revolving Loans hereunder) by or on behalf of the Canadian Subsidiary Borrower and the Foreign Subsidiaries at such time. The Canadian L/C Exposure of any Revolving Lender at any time shall be its Applicable Percentage of the Canadian L/C Exposure at such time.

"Canadian Lending Office" means, as to any Lender, the applicable branch, office or Affiliate of such Lender designated by such Lender to make Canadian Revolving Loans to the Canadian Subsidiary Borrower.

"Canadian Mortgage" means a mortgage, deed of trust, assignment of leases and rents, leasehold mortgage or other security document (including any amendment, modification or supplement thereto) granting a Lien on any Mortgaged Property located in Canada or any province thereof to secure the Secured Obligations. Each Canadian Mortgage shall be reasonably satisfactory in form and substance to the Administrative Agent.

"Canadian Multi-Employer Plan" means a multi-employer plan within the meaning of the Regulations under the Canadian Tax Act.

"Canadian Obligations" means (a) all unpaid principal of and accrued and unpaid interest on Loans made to the Canadian Subsidiary Borrower, (b) all L/C Exposure in respect of Letters of Credit deemed issued, pursuant to Section 2.04(a), for the account of the Canadian Subsidiary Borrower and the Foreign Subsidiaries and (c) all accrued and unpaid fees and all expenses, reimbursements, indemnities and other obligations of the Canadian Subsidiary Borrower and the Foreign Subsidiary Loan Parties owed to the Lenders or to any Lender, the Administrative Agent, the Issuing Bank or any indemnified party arising under the Loan Documents (including the Guarantees provided by the Loan Guarantors pursuant to Article X).

"Canadian Order" has the meaning assigned to such term in the recitals to this Agreement.

"Canadian Pension Plan" means any "registered pension plan" as defined in the Canadian Tax Act established, maintained or contributed to by either Borrower or any Subsidiary for their Canadian employees or former Canadian employees but does not include a Canadian Multi-Employer Plan.

"Canadian Perfection Certificate" means, at any time, the certificate most-recently delivered to the Administrative Agent (a) in the case of the Effective Date, pursuant to Section 4.01(e) or (b) thereafter, pursuant to Section 3.03(c) of the Canadian Security Agreement, in each case in the form of Exhibit F or any other form approved by the Administrative Agent.

"Canadian Proceeding" has the meaning assigned to such term in the recitals to this Agreement.

"Canadian Receivables Account" has the meaning assigned to the term "Receivables Account" in Section 3.06 of the Canadian Security Agreement.

"Canadian Resident" means a Person that is (a) resident in Canada for purposes of the Canadian Tax Act or (b) deemed to be resident in Canada for purposes of the Canadian Tax Act in respect

of all amounts paid or credited hereunder by the Canadian Subsidiary Borrower and the Canadian Subsidiary Loan Parties.

"Canadian Revolving Exposure" means, at any time, the sum of (a) the U.S. Dollar Equivalent of the aggregate principal amount of Canadian Revolving Loans denominated in Canadian Dollars outstanding at such time, (b) the aggregate principal amount of the Canadian Revolving Loans denominated in U.S. Dollars outstanding at such time and (c) the U.S. Dollar Equivalent of the Canadian L/C Exposure at such time. The Canadian Revolving Exposure of any Revolving Lender at any time shall be its Applicable Percentage of the Canadian Revolving Exposure at such time.

"Canadian Revolving Loan" means a Loan made by a Revolving Lender pursuant to Section 2.01(b). Each Canadian Revolving Loan (a) denominated in Canadian Dollars shall be a Canadian Base Rate Revolving Loan and (b) denominated in U.S. Dollars shall be a U.S. Base Rate Revolving Loan or a Eurodollar Revolving Loan.

"Canadian Revolving Sub-Commitment" means, with respect to each Revolving Lender, the commitment of such Lender to make Canadian Revolving Loans or acquire participations in Letters of Credit, expressed as an amount expressed in U.S. Dollars representing the maximum potential aggregate amount of such Lender's Canadian Revolving Exposure, as such commitment may be (a) reduced from time to time pursuant to Section 2.08 or Section 2.18(b) or (b) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 9.02(d), Section 9.02(e) or Section 9.04. The initial amount of each Revolving Lender's Canadian Revolving Sub-Commitment is set forth opposite such Lender's name in the Commitment Schedule directly below the column entitled "Canadian Revolving Sub-Commitments" or in the Assignment and Assumption pursuant to which such Lender shall have assumed its Canadian Revolving Sub-Commitment, and, in any such case, shall be equal to such Lender's Applicable Percentage of the aggregate Canadian Revolving Sub-Commitments. The initial aggregate amount of the Revolving Lenders' Canadian Revolving Sub-Commitments is $24,360,000.

"Canadian Sale Process Order" has the meaning assigned to it in Section 5.14(a).

"Canadian Security Agreement" means the Canadian Security Agreement dated on or about the date hereof, substantially in the form attached hereto as Exhibit G-2, among the Parent Borrower, the Canadian Subsidiary Borrower, each Subsidiary Loan Party party thereto and the Administrative Agent.

"Canadian Subsidiary Borrower" has the meaning assigned to such term in the preamble to this Agreement.

"Canadian Subsidiary Loan Party" means any Subsidiary that is organized under the laws of Canada or any territory or province thereof (other than the Canadian Subsidiary Borrower) and that is a Foreign Subsidiary Loan Party.

"Canadian Tax Act" means the Income Tax Act (Canada) or any successor law purported to cover the same subject matter, as amended from time to time.

"Canadian Trademark Security Agreement" means the Canadian Trademark Security Agreement dated on or about the date hereof, in form and substance satisfactory to the Administrative Agent, among the Canadian Subsidiary Borrower, each Subsidiary Loan Party party thereto and the Administrative Agent.

"Capital Expenditures" means, for any period, (a) the additions to property, plant and equipment and other capital expenditures of the Parent Borrower and the Subsidiaries that are (or should be) set forth in a consolidated statement of cash flows of the Parent Borrower for such period prepared in accordance with GAAP and (b) Capital Lease Obligations incurred by the Parent Borrower and the Subsidiaries during such period, but excluding in each case (i) expenditures made by the Parent Borrower or the applicable Subsidiary to effect leasehold improvements to any property leased by the Parent Borrower or such Subsidiary to the extent such expenditures are reimbursed by the landlord in respect of such property within 30 days of such expenditures (as such number of days may be extended with the written consent of the Administrative Agent) and (ii) expenditures actually paid for by a third party (excluding Holdings or any subsidiary thereof) and for which no Loan Party has provided or is required to provide any consideration to such third party.

"Capital Lease Obligations" of any Person means the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP.

"Carve-Out" means (a) the unpaid fees due and payable to the Clerk of the Bankruptcy Court and the Office of the United States Trustee pursuant to 28 U.S.C. § 1930, (b) all reasonable fees and expenses incurred by a trustee under Section 726(b) of the Bankruptcy Code in an amount not exceeding $25,000 in the aggregate and (c) after the occurrence and during the continuance of an Event of Default, the payment of allowed and unpaid professional fees and disbursements incurred after the occurrence of such Event of Default by Holdings, the Parent Borrower and the Domestic Subsidiaries and any statutory committee appointed in the Bankruptcy Cases (in each case, other than any such fees and disbursements incurred in connection with the initiation or prosecution of any claims, causes of action, adversary proceedings or other litigation against the Prepetition Agent or the Prepetition Revolving Lenders) in an aggregate amount not in excess of the Carve-Out Cap, provided that notwithstanding the foregoing, prior to the occurrence of an Event of Default, the payment by Holdings, the Parent Borrower and the Domestic Subsidiaries of the compensation and reimbursement of expenses allowed and payable under Sections 330 and 331 of the Bankruptcy Code shall not reduce the Carve-Out.

"Carve-Out Cap" means $1,000,000.

"Cash Collateral Loans" has the meaning assigned to such term in the Interim Cash Collateral Order.

"Cash Flow Forecast" collectively means the 13-week cash flow forecast prepared each week by the Parent Borrower in form and with detail substantially similar to the 13-week cash flow forecast delivered to the Administrative Agent on March 25, 2009, which shall reflect the Parent Borrower's good faith projection of all cash receipts and disbursements in connection with the operation of its and the Subsidiaries' businesses for the next 13-week period.

"Cash Management Order" means that certain order issued by the Bankruptcy Court in substantially the form of Exhibit I (Form of Cash Management Order) and otherwise in form and substance reasonably satisfactory to the Administrative Agent.

"CCAA" has the meaning assigned to such term in the recitals to this Agreement.

"CCAA Charges" means the Administration Charge and the Directors Charge.

"CCAA Plan" means any plan of compromise or arrangement in the Canadian Proceeding, made pursuant to the CCAA.

"CDOR Rate" means, on any date, an interest rate per annum equal to the average discount rate applicable to bankers' acceptances denominated in Canadian Dollars with a term of 30 days appearing on the Reuters Screen CDOR Page (or on any successor or substitute page of such Screen, or any successor to or substitute for such Screen, providing rate quotations comparable to those currently provided on such page of such Screen, as determined by the Administrative Agent from time to time) at approximately 10:00 a.m., Toronto time, on such date (or, if such date is not a Business Day, on the next preceding Business Day) or, if such rate is not so reported, the average of the rate quotes for bankers' acceptances denominated in Canadian Dollars (expressed as a decimal and rounded upward, if necessary, to the nearest 1/100 of 1%) with a term of 30 days received by the Administrative Agent at approximately 10:00 a.m., Toronto time, on such date (or, if such date is not a Business Day, on the next preceding Business Day) from the Schedule I Reference Lenders.

"Change in Law" means (a) the adoption of any law, rule or regulation after the Effective Date, (b) any change in any law, rule or regulation or in the interpretation or application thereof by any Governmental Authority after the Effective Date or (c) compliance by any Lender or the Issuing Bank (or, for purposes of Section 2.14(b), by any lending office of such Lender or by such Lender's or the Issuing Bank's holding company, if any) with any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the Effective Date.

"Chapter 11 Plan" means a Chapter 11 plan in any of the Bankruptcy Cases.

"Class", when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are U.S. Revolving Loans, Canadian Revolving Loans or Term Loans and, when used in reference to any Commitment, refers to whether or not such Commitment is a Canadian Revolving Sub-Commitment.

"Class", when used in reference to any Lender, refers to whether such Lender has a Loan or Commitment with respect to a particular Class.

"CLO" has the meaning assigned to such term in Section 9.04(b).

"Code" means the Internal Revenue Code of 1986, as amended from time to time.

"Collateral" means all the "Collateral" or "Property" as defined in any Collateral Document, the Orders and the Canadian Order and shall also include the Mortgaged Properties.

"Collateral Access Agreement" has the meaning assigned to such term in the Security Agreements.

"Collateral Documents" means, collectively, the Security Agreements, the Canadian Hypothecs, the Mortgages and any other documents granting a Lien upon the Collateral as security for payment of the Secured Obligations specified therein.

"Commitment" means, with respect to any Lender, such Lender's Revolving Commitment and/or Canadian Revolving Sub-Commitment (as the context requires).

"Commitment Fee" has the meaning assigned to such term in Section 2.11(a).

"Commitment Schedule" means Schedule 2.01 hereto.

"Company Sale" has the meaning assigned to such term in Section 5.14(b).

"Consolidated EBITDA" means, for any period, Consolidated Net Income for such period plus (a) without duplication and to the extent deducted in determining such Consolidated Net Income, the sum of (i) consolidated interest expense, amortization or write-off of debt discount and debt issuance costs and commissions, discounts and other fees and charges associated with Indebtedness for such period, (ii) consolidated income tax expense (and expenses for franchise tax in the nature of income tax) and foreign withholding tax expense for such period and any expense for state single business, unitary, gross receipts or similar taxes for such period, (iii) all amounts attributable to depreciation and amortization (including amortization of intangibles (including goodwill and organizational costs)) for such period (excluding any amortization expense attributable to a prepaid cash item that was paid in a prior period), (iv) any extraordinary, unusual or non-recurring non-cash charges for such period (but excluding any such non-cash charge in respect of an item to the extent that it was included in Consolidated Net Income in a prior period and any such charge that results from the write-down or write-off of inventory), (v) fees and expenses incurred during such period in connection with any proposed or actual issuance of any Indebtedness or Equity Interests, or any proposed or actual investments, asset sales or divestitures, in each case permitted hereunder, in an aggregate amount not to exceed (for each such transaction) 2.0% of the aggregate value of such transaction, (vi) non-cash expenses resulting from the grant of stock options or other equity-related incentives to any director, officer or employee of Holdings, the Parent Borrower or any Subsidiary pursuant to a written plan or agreement approved by the Board of Directors of Holdings, (vii) non-cash exchange, translation or performance losses relating to any foreign currency or commodities hedging transactions or currency fluctuations, (viii) any non-cash losses during such period resulting from the application of Financial Accounting Standards No. 142 (relating to changes in accounting for the amortization of goodwill and certain other intangibles) and Financial Accounting Standards No. 144 (relating to writedowns of long-lived assets), (ix) payments by Holdings, the Parent Borrower or any Subsidiary in respect of earn-outs to which the seller in any acquisition or disposition becomes entitled during such period, (x) any loss during such period in respect of post-retirement benefits as a result of the application of Financial Accounting Standards No. 106, (xi) any loss resulting from the disposition of any asset of Holdings, the Parent Borrower or any Subsidiary not in the ordinary course of business, (xii) charges during such period in respect of legal, pension, warranty, workers compensation, occupancy and severance costs relating to discontinued businesses that are unrelated to the continuing business of the Parent Borrower and the Subsidiaries and (xiii) amounts received from customers relating to margin calls, as calculated in accordance with the methodology employed in the Forecast for determining the item entitled "Hedge Pickup", minus (b) without duplication and (except in the case of clause (i)) to the extent included in determining such Consolidated Net Income, the sum of (i) any cash disbursements during such period that relate to non-cash charges or losses added to Consolidated Net Income pursuant to clause (a)(iv) or (a)(vi) of this paragraph in any prior period, (ii) any extraordinary, unusual or non-recurring non-cash gains for such period, (iii) any non-cash gains for such period that represent the reversal of any accrual in a prior period for, or the reversal of any cash reserves established in a prior period for, anticipated cash charges, (iv) non-cash exchange, translation or performance gains relating to any foreign currency or commodities hedging transactions or currency fluctuations, (v) any non-cash gains during such period resulting from the application of Financial Accounting Standards No. 142 (relating to changes in accounting for the amortization of goodwill and certain other intangibles) and Financial Accounting Standards No. 144 (relating to writedowns of long-lived assets), (vi) any gain during such period in respect of post-retirement benefits as a result of the application of Financial Accounting Standards No. 106, (vii) any gain during such period from discontinued operations of the Parent Borrower and (viii) any gain resulting from the disposition of any asset of Holdings, the Parent Borrower or any Subsidiary not in the ordinary course of business, all as determined on a consolidated basis in accordance with GAAP.

"Consolidated Net Income" means, for any period, the net income (excluding interest income) or loss of Holdings, the Parent Borrower and the Subsidiaries for such period determined on a consolidated basis in accordance with GAAP, provided that there shall be excluded (a) the income of any Subsidiary to the extent that the declaration or payment of dividends or other distributions by such Subsidiary of that income is not at the time permitted by a Requirement of Law or any agreement or instrument applicable to such Subsidiary (other than the Loan Documents, the Prepetition Loan Documents and the Senior Secured Notes Documents), except to the extent of the amount of cash dividends or other cash distributions actually paid to the Parent Borrower or any Subsidiary (unless the income of such Subsidiary would be excluded from Consolidated Net Income pursuant to clause (b) of this proviso) during such period, (b) the income of any Person (other than the Parent Borrower or any Subsidiary that is not accounted for using the equity method of accounting) in which the Parent Borrower or any Subsidiary owns an Equity Interest, except to the extent of the amount of cash dividends or other cash distributions actually paid to the Parent Borrower or any Subsidiary (unless the income of such Subsidiary would be excluded from Consolidated Net Income pursuant to clause (a) of this proviso) during such period and (c) unrealized gains and losses with respect to Swap Agreements during such period.

"Consolidated Net Sales" means, for any period, the net sales of Holdings, the Parent Borrower and the Subsidiaries for such period determined on a consolidated basis in accordance with GAAP.

"Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies, or the dismissal or appointment of management, of a Person, whether through the ability to exercise voting power, by contract or otherwise. The terms "Controlling" and "Controlled" have meanings correlative thereto.

"Daily Borrowing Base Certificate" means a certificate, signed and certified as accurate and complete by a Financial Officer or any other officer of the Parent Borrower reasonably acceptable to the Administrative Agent, in substantially the form of Exhibit C-1 or another form that is reasonably acceptable to the Administrative Agent in its sole discretion, which shall include appropriate exhibits, schedules, supporting documentation and additional reports (a) as outlined in Schedule 1 to Exhibit C-1 and (b) as reasonably requested by the Administrative Agent.

"Default" means any event or condition that constitutes an Event of Default or that upon notice, lapse of time or both would, unless cured or waived, become an Event of Default.

"Defaulting Lender" means any Revolving Lender, as determined by the Administrative Agent, that has (a) failed to fund any portion of its Revolving Loans or participations in Letters of Credit within three Business Days of the date required to be funded by it hereunder, (b) notified the Parent Borrower, the Administrative Agent, the Issuing Bank or any Lender in writing that it does not intend to comply with any of its funding obligations under this Agreement or has made a public statement to the effect that it does not intend to comply with its funding obligations under this Agreement or under other agreements in which it commits to extend credit, (c) failed, within three Business Days after request by the Administrative Agent, to confirm that it will comply with the terms of this Agreement relating to its obligations to fund prospective Revolving Loans and participations in then outstanding Letters of Credit, (d) otherwise failed to pay over to the Administrative Agent or any other Revolving Lender any other amount required to be paid by it hereunder within three Business Days of the date when due, unless the subject of a good faith dispute or (e) (i) become or is insolvent or has a parent company that has become or is insolvent or (ii) become the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee or custodian appointed for it, or has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in any such proceeding or appointment or has a parent

company that has become the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee or custodian appointed for it, or has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in any such proceeding or appointment.

"Dilution Factors" means, without duplication, with respect to any period, the aggregate amount of all deductions, credit memos, returns, adjustments, allowances, bad debt write-offs and other non-cash credits that are recorded during such period to reduce (x) with respect to the Domestic Borrowing Base, the Accounts of the Parent Borrower and the wholly-owned Domestic Subsidiary Loan Parties in a manner consistent with current and historical accounting practices of the Parent Borrower and such Domestic Subsidiary Loan Parties, as the case may be, or (y) with respect to the Canadian Borrowing Base, the Accounts of the Canadian Subsidiary Borrower and the wholly-owned Canadian Subsidiary Loan Parties in a manner consistent with current and historical accounting practices of the Canadian Subsidiary Borrower and such Canadian Subsidiary Loan Parties, as the case may be.

"Dilution Ratio" means, on any date, the quotient (expressed as a percentage) equal to (x) with respect to the Domestic Borrowing Base, (i) the aggregate amount of the Dilution Factors in respect of the Accounts of the Parent Borrower and the wholly-owned Domestic Subsidiary Loan Parties for the twelve fiscal month period most recently ended on or prior to such date divided by (ii) the aggregate gross sales of the Parent Borrower and such Domestic Subsidiary Loan Parties for such twelve fiscal month period, or (y) with respect to the Canadian Borrowing Base, (i) the aggregate amount of the Dilution Factors in respect of the Accounts of the Canadian Subsidiary Borrower and the wholly-owned Canadian Subsidiary Loan Parties for the twelve fiscal month period most recently ended on or prior to such date divided by (ii) the aggregate gross sales of the Canadian Subsidiary Borrower and such Canadian Subsidiary Loan Parties for such twelve fiscal month period.

"Dilution Reserve" means, on any date, (x) with respect to the Domestic Borrowing Base, the product of (i) the excess, if any, of the applicable Dilution Ratio over 5% multiplied by (ii) the aggregate amount of Eligible Accounts of the Parent Borrower and the wholly-owned Domestic Subsidiary Loan Parties, in each case as of such date, or (y) with respect to the Canadian Borrowing Base, the product of (i) the excess, if any, of the applicable Dilution Ratio over 5% multiplied by (ii) the aggregate amount of Eligible Accounts of the Canadian Subsidiary Borrower and the wholly-owned Canadian Subsidiary Loan Parties, in each case as of such date.

"DIP Lenders' Charge" has the meaning assigned to such term in Section 2.21(b).

"Directors Charge" means a superpriority charge provided for in the Canadian Order securing the indemnity owing by the Canadian Subsidiary Borrower and the Canadian Subsidiary Loan Parties to their directors and officers in an amount not to exceed $1,000,000 in priority to the DIP - Lenders' Charge.

"Disclosed Matters" means the actions, suits and proceedings and the environmental matters disclosed in Schedule 3.06.

"Document" has the meaning assigned to such term in the Domestic Security Agreement.

"Domestic Borrowing Base" means, at any time, the sum of (a) 85% of the U.S. Dollar Equivalent of the aggregate Adjusted Eligible Accounts of the Parent Borrower and the wholly-owned Domestic Subsidiary Loan Parties at such time, plus (b) the lesser of (i) 85% of the product of (x) the Net Recovery Liquidation Rate in effect (based on the then most recent independent Inventory appraisal in form, scope and substance reasonably satisfactory to the Administrative Agent) at such time multiplied by (y) the aggregate amount of Inventory of the Parent Borrower and the wholly-owned Domestic Subsidiary

Loan Parties at such time (as reported in accordance with the applicable Loan Party's Inventory records) minus any applicable Reserves, and (ii) the sum of (A) 75% of the aggregate cost of Eligible Aluminum Billets and (B) 65% of the aggregate cost of Other Eligible Inventory, in each case of the Parent Borrower and the wholly-owned Domestic Subsidiary Loan Parties at such time minus any applicable Reserves (in the case of each of subclauses (i) and (ii) of this clause (b), with any Inventory, Eligible Inventory, Eligible Aluminum Billets and Other Eligible Inventory to be valued on a first-in, first-out basis), provided that the aggregate amount determined pursuant to this clause (b) shall not constitute more than 50% of the Domestic Borrowing Base at such time and shall not be greater than $8,000,000, plus (c) the PP&E Component at such time minus (d) without duplication, Reserves with respect to the Parent Borrower and the wholly-owned Domestic Subsidiary Loan Parties at such time. The Administrative Agent may, in its Permitted Discretion, from time to time, reduce the advance rates set forth above or establish and revise ineligibles and Reserves reducing the amount of Eligible Accounts, Inventory, Eligible Inventory, Eligible Aluminum Billets, Other Eligible Inventory, Eligible Machinery and Equipment and Eligible Real Property used in computing the Domestic Borrowing Base, with any such changes to be effective one Business Day after delivery of notice thereof to the Parent Borrower and the Lenders (which notice shall describe in reasonable detail the reasons for such changes), provided that any Reserve established by the Administrative Agent shall not apply in respect of items excluded from Eligible Accounts, Eligible Inventory, Eligible Aluminum Billets, Other Eligible Inventory, Eligible Machinery and Equipment and Eligible Real Property pursuant to the definitions thereof or covered by any other Reserve in effect at the time such Reserve is established. The Domestic Borrowing Base at any time shall be determined by reference to the most recent Daily Borrowing Base Certificate delivered to the Administrative Agent (i) in the case of the initial Domestic Borrowing Base, at or prior to the Effective Date or (ii) thereafter, pursuant to Section 5.01(f).

"Domestic Security Agreement" means the Domestic Security Agreement dated on or about the date hereof, among Holdings, the Parent Borrower, each Domestic Subsidiary Loan Party and the Administrative Agent, substantially in the form attached hereto as Exhibit G-1.

"Domestic Subsidiary" means any Subsidiary that is organized under the laws of the United States of America, any State thereof or the District of Columbia.

"Domestic Subsidiary Loan Party" means any Domestic Subsidiary.

"Effective Date" means the date on which the conditions specified in Section 4.01 are satisfied (or waived in accordance with Section 9.02), which date may not occur more than five Business Days after the date on which both the Interim Order and the Canadian Order have been entered.

"Eligible Accounts" means, at any time, the Accounts of (x) the Parent Borrower and the wholly-owned Domestic Subsidiary Loan Parties at such time, in the case of the Domestic Borrowing Base, or (y) the Canadian Subsidiary Borrower and the wholly-owned Canadian Subsidiary Loan Parties at such time, in the case of the Canadian Borrowing Base, but excluding any Account:

(a) that is not, after giving effect to the Orders and the Canadian Order, subject to a first priority perfected security interest in favor of the Administrative Agent (other than the CCAA Charges with respect to the Accounts of the Canadian Subsidiary Borrower and the Canadian Subsidiary Loan Parties) or to which the applicable Loan Party does not have sole lawful and absolute title;

(b) that is subject to any Lien other than (i) a Lien in favor of the Administrative Agent, (ii) a Lien in favor of the Prepetition Agent under the Prepetition Loan Documents, (iii) Liens

granted under the Orders or the Canadian Order and (iv) a Permitted Encumbrance that does not have priority over the Lien in favor of the Administrative Agent;

(c) with respect to which the scheduled due date is more than 90 days after the original invoice date, that is unpaid more than 120 days after the date of the original invoice therefor or more than 60 days after the original due date, or that has been written off the books of the Parent Borrower or the applicable Domestic Subsidiary Loan Party, in the case of the Domestic Borrowing Base, or the Canadian Subsidiary Borrower or the applicable Canadian Subsidiary Loan Party, in the case of the Canadian Borrowing Base, or otherwise designated as uncollectible;

(d) that is owing by an Account Debtor for which more than 50% of the aggregate amount of Accounts owing from such Account Debtor and its Affiliates are ineligible hereunder;

(e) that is owing by an Account Debtor to the extent the aggregate amount of Accounts owing from such Account Debtor and its Affiliates to (i) the Parent Borrower or any wholly-owned Domestic Subsidiary Loan Party, in the case of the Domestic Borrowing Base, exceeds 10% (or, in the case of Utility Trailer Manufacturing Co. or Eastern Metal Supply, 15%) of the aggregate Eligible Accounts attributable to the Domestic Borrowing Base, and (ii) the Canadian Subsidiary Borrower or any wholly-owned Canadian Subsidiary Loan Party, in the case of the Canadian Borrowing Base, exceeds 10% (or, in the case of Utility Trailer Manufacturing Co. or Eastern Metal Supply, 15%) of the aggregate Eligible Accounts attributable to the Canadian Borrowing Base;

(f) with respect to which any covenant, representation or warranty contained in any Loan Document has been breached or is not true;

(g) that (i) does not arise from the sale of goods or performance of services in the ordinary course of business, (ii) is not evidenced by an invoice or other documentation reasonably satisfactory to the Administrative Agent that has been sent to the Account Debtor, (iii) represents a progress billing, (iv) is contingent upon (A) the Parent Borrower or any Domestic Subsidiary Loan Party's, in the case of the Domestic Borrowing Base, or (B) the Canadian Subsidiary Borrower or any Canadian Subsidiary Loan Party's, in the case of the Canadian Borrowing Base, completion of any further performance, (v) represents a sale on a bill-and-hold, guaranteed sale, sale-and-return, sale on approval, consignment, cash-on-delivery or any other repurchase or return basis (other than customary customer return rights) or (vi) relates to payments of interest;

(h) (i) for which the goods giving rise to such Account have not been shipped to the Account Debtor or its designee, (ii) for which the services giving rise to such Account have not been performed by (A) the Parent Borrower or the applicable Domestic Subsidiary Loan Party, in the case of the Domestic Borrowing Base, or (B) the Canadian Subsidiary Borrower or the applicable Canadian Subsidiary Loan Party, in the case of the Canadian Borrowing Base, (iii) for which the associated income has not been earned or (iv) if such Account was invoiced more than once;

(i) that is owed by an Account Debtor that has (i) applied for, suffered or consented to the appointment of any receiver, interim receiver, receiver manager, custodian, trustee, or liquidator of its assets, (ii) has had possession of all or a material part of its property taken by any receiver, interim receiver, receiver manager, custodian, trustee or liquidator, (iii) filed, or had filed against it, any request or petition for liquidation, reorganization, arrangement, adjustment of debts, adjudication as bankrupt, winding-up or voluntary or involuntary case under any federal, state, provincial or foreign bankruptcy or insolvency laws, (iv) has admitted in writing its inability, or is

generally unable to, pay its debts as they become due, (v) become insolvent or (vi) ceased operation of its business;

(j) that is owed by an Account Debtor that (i) does not maintain its chief executive office in the United States of America, any State thereof or the District of Columbia or Canada or any province thereof, or (ii) is not organized under applicable law of the United States of America or any state thereof or Canada or any province thereof, in each case, unless such Account (or portion thereof that is reasonably acceptable to the Administrative Agent) is backed by a letter of credit, guarantee or eligible bankers' acceptance acceptable to the Administrative Agent and in which the Administrative Agent has a perfected security interest;

(k) that is owed in any currency other than U.S. Dollars or Canadian Dollars;

(l) that is owed by (i) the government (or any department, agency, public corporation or instrumentality thereof) of any country other than (A) the United States of America, in the case of the Domestic Borrowing Base, or (B) the United States of America or Canada, in the case of the Canadian Borrowing Base, in each case, unless such Account (or portion thereof that is reasonably acceptable to the Administrative Agent) is backed by a letter of credit, guarantee or eligible bankers' acceptance acceptable to the Administrative Agent and in which the Administrative Agent has a perfected security interest, (ii) the government of the United States of America, or any department, agency, public corporation or instrumentality thereof, unless the Federal Assignment of Claims Act of 1940, as amended (31 U.S.C. §§ 3727 et seq. and 41 U.S.C. §§ 15 et seq.), and any other steps necessary to perfect the Lien of the Administrative Agent in such Account have been complied with to the Administrative Agent's reasonable satisfaction, or (iii) in the case of the Canadian Borrowing Base, the government of Canada, or any department, agency, public corporation or instrumentality thereof, unless the Financial Administration Act (Canada), as amended, and any other steps necessary to perfect the Lien of the Administrative Agent in such Account have been complied with to the Administrative Agent's reasonable satisfaction;

(m) that is owed by any Affiliate (other than any portfolio company directly or indirectly owned by the Sponsor so long as such Account has terms comparable to those provided to third parties on an arms length basis), employee, officer, director, agent or stockholder of any Loan Party;

(n) that, for any Account Debtor, exceeds a credit limit determined by the Administrative Agent in its Permitted Discretion, to the extent of such excess;

(o) that is owed by an Account Debtor or any Affiliate of such Account Debtor to which (i) the Parent Borrower or any Domestic Subsidiary Loan Party, in the case of the Domestic Borrowing Base, or (ii) the Canadian Subsidiary Borrower or any Canadian Subsidiary Loan Party, in the case of the Canadian Borrowing Base, is indebted, but only to the extent of such indebtedness, or is subject to any security, deposit, progress payment, retainage or other similar advance made by or for the benefit of an Account Debtor, in each case to the extent thereof;

(p) that is subject to any counterclaim, deduction, defense, setoff or dispute (but only to the extent of any such counterclaim, deduction, defense, setoff or dispute) or is subject to offset related to actual or anticipated sales volume rebates (but only to the extent of any such rebate);

(q) that is owed by an Account Debtor located in any jurisdiction that requires filing of a "Notice of Business Activities Report" or other similar report in order to permit (i) the Parent

Borrower or the applicable Domestic Subsidiary Loan Party, in the case of the Domestic Borrowing Base, or (ii) the Canadian Subsidiary Borrower or the applicable Canadian Subsidiary Loan Party, in the case of the Canadian Borrowing Base, to seek judicial enforcement in such jurisdiction of payment of such Account, unless the Parent Borrower, such Domestic Subsidiary Loan Party, the Canadian Subsidiary Borrower or such Canadian Subsidiary Loan Party, as applicable, has filed such report or qualified to do business in such jurisdiction, unless such failure to file may be cured by the payment of a de minimis amount;

(r) with respect to which (i) the Parent Borrower or any Domestic Subsidiary Loan Party, in the case of the Domestic Borrowing Base, or (ii) the Canadian Subsidiary Borrower or any Canadian Subsidiary Loan Party, in the case of the Canadian Borrowing Base, has made any agreement with the Account Debtor for any reduction thereof, other than discounts and adjustments given in the ordinary course of business, or any Account that was partially paid and the Parent Borrower, such Domestic Subsidiary Loan Party, the Canadian Subsidiary Borrower or such Canadian Subsidiary Loan Party, as applicable, created a new receivable for the unpaid portion of such Account;

(s) that does not comply in all material respects with the requirements of all applicable laws and regulations, whether federal, state, provincial or local, including, where applicable, the Federal Consumer Credit Protection Act, the Federal Truth in Lending Act and Regulation Z of the Board;

(t) that is for goods that have been sold under a purchase order or pursuant to the terms of a contract or other agreement or understanding (written or oral) that indicates or purports that any Person other than (i) the Parent Borrower or the applicable Domestic Subsidiary Loan Party, in the case of the Domestic Borrowing Base, or (ii) the Canadian Subsidiary Borrower or the applicable Canadian Subsidiary Loan Party, in the case of the Canadian Borrowing Base, has or has had an ownership interest in such goods, or that indicates any party other than (A) the Parent Borrower or the applicable Domestic Subsidiary Loan Party, in the case of the Domestic Borrowing Base, or (B) the Canadian Subsidiary Borrower or the applicable Canadian Subsidiary Loan Party, in the case of the Canadian Borrowing Base, as payee or remittance party (it being understood and agreed that the transfer of a purchase order from the Parent Borrower or any Domestic Subsidiary Loan Party to the Canadian Subsidiary Borrower or any Canadian Subsidiary Loan Party, or from the Canadian Subsidiary Borrower or any Canadian Subsidiary Loan Party to the Parent Borrower or any Domestic Subsidiary Loan Party, as the case may be, for capacity or other ordinary course business reasons shall not, in itself, result in the Account created in respect of such purchase order being deemed ineligible pursuant to this clause (t) for purposes of (1) the Domestic Borrowing Base, if the transferee is the Parent Borrower or any Domestic Subsidiary Loan Party, or (2) the Canadian Borrowing Base, if the transferee is the Canadian Subsidiary Borrower or any Canadian Subsidiary Loan Party);

(u) that was created on cash on delivery terms;

(v) that arises from sales to third party processors to the extent that the underlying inventory will be returned to the applicable Loan Party;

(w) that the Administrative Agent determines in its Permitted Discretion may not be paid by reason of the Account Debtor's inability to pay; or

(x) that is deemed ineligible by the Administrative Agent in its Permitted Discretion.

In addition to the foregoing, Eligible Accounts shall not include any portion of Accounts related to unreconciled variances between the accounts receivable aging and the general ledger to the extent that the general ledger is less than the accounts receivable aging. In determining the amount of an Eligible Account, the face amount of an Account shall be reduced by, without duplication, to the extent not reflected in such face amount, (i) the amount of all accrued and actual discounts, claims, credits or credits pending, promotional program allowances, price adjustments, finance charges or other allowances (including any amount that (A) the Parent Borrower or the applicable Domestic Subsidiary Loan Party, in the case of the Domestic Borrowing Base, or (B) the Canadian Subsidiary Borrower or the applicable Canadian Subsidiary Loan Party, in the case of the Canadian Borrowing Base, may be obligated to rebate to an Account Debtor pursuant to the terms of any agreement or understanding (written or oral)) and (ii) the aggregate amount of all cash received in respect of such Account but not yet applied by (A) the Parent Borrower or the applicable Domestic Subsidiary Loan Party, in the case of the Domestic Borrowing Base, or (B) the Canadian Subsidiary Borrower or the applicable Canadian Subsidiary Loan Party, in the case of the Canadian Borrowing Base, to reduce the amount of such Account. In determining the aggregate amount from the same Account Debtor that is unpaid more than 120 days from the original invoice date or more than 60 days from the original due date pursuant to clause (c) above, there shall be excluded the amount of any net credit balances relating to Accounts due from such Account Debtor with invoice dates more than 120 days from the original invoice date or more than 60 days from the original due date, as the case may be.

"Eligible Aluminum Billets" means, at any time, the portion of Eligible Inventory of (x) the Parent Borrower and the wholly-owned Domestic Subsidiary Loan Parties at such time, in the case of the Domestic Borrowing Base, or (y) the Canadian Subsidiary Borrower and the wholly-owned Canadian Subsidiary Loan Parties at such time, in the case of the Canadian Borrowing Base, in each case that is comprised of aluminum billets and logs as shown on the applicable Loan Party's Inventory records in accordance with such Loan Party's current and historical accounting practices.

"Eligible Inventory" means, at any time, the Inventory of (x) the Parent Borrower and the wholly-owned Domestic Subsidiary Loan Parties at such time, in the case of the Domestic Borrowing Base, or (y) the Canadian Subsidiary Borrower and the wholly-owned Canadian Subsidiary Loan Parties at such time, in the case of the Canadian Borrowing Base, but excluding any Inventory:

(a) that is not subject to a first priority perfected Lien in favor of the Administrative Agent (other than the CCAA Charges with respect to Inventory of the Canadian Subsidiary Borrower and the Canadian Subsidiary Loan Parties), except to the extent that this clause (a) would exclude any Inventory that is otherwise expressly included pursuant to this definition;

(b) that is subject to any Lien other than (i) a Lien in favor of the Administrative Agent, (ii) a Lien in favor of the Prepetition Agent under the Prepetition Credit Agreement, (iii) Liens granted under the Orders or the Canadian Order and (iv) a Permitted Encumbrance that does not have priority over the Lien in favor of the Administrative Agent, except in each case to the extent that this clause (b) would exclude any Inventory that is otherwise expressly included pursuant to this definition;

(c) that is, in the Administrative Agent's reasonable opinion, seconds or thirds, stale, slow-moving, obsolete, unmerchantable, defective, used, unfit for sale, not salable in the ordinary course of business at prices approximating at least the cost of such Inventory, or unacceptable due to age, type, category and/or quantity, or that is identified by the applicable Loan Party as overstock or excess;

(d) with respect to which any covenant, representation or warranty contained in any Loan Document has been breached or is not true and that does not conform to all standards imposed by any Governmental Authority;

(e) in which any Person other than (i) the Parent Borrower and the wholly-owned Domestic Subsidiary Loan Parties, in the case of the Domestic Borrowing Base, and (ii) the Canadian Subsidiary Borrower and the wholly-owned Canadian Subsidiary Loan Parties, in the case of the Canadian Borrowing Base, shall (A) have any direct or indirect ownership, interest or title to such Inventory, except for any interest (and any rights associated therewith, other than title) of such Person that arises in respect of Inventory (1) (x) as identified goods pursuant to Section 2-501 of the Uniform Commercial Code or (y) pursuant to Section 2-716 of the Uniform Commercial Code or (2) pursuant to any similar Canadian law or laws or (B) be indicated on any purchase order or invoice with respect to such Inventory as having or purporting to have an interest therein;

(f) that constitutes spare or replacement parts, subassemblies, packaging and shipping material, manufacturing supplies, samples, prototypes, displays or display items, bill-and-hold goods, goods that are returned or marked for return, repossessed goods, defective, damaged or rejected goods, goods held by any Loan Party on consignment, or goods that are not of a type held for sale in the ordinary course of business;

(g) that (i) is not located in the United States of America (in the case of the Domestic Borrowing Base) or Canada (in the case of the Canadian Borrowing Base) or (ii) is in transit with a common carrier from vendors and suppliers (as opposed to in transit with a common carrier between locations of Loan Parties, in which case such Inventory shall not be excluded by virtue thereof) or (iii) is being held by a Governmental Authority for purposes of customs clearance, except that any Inventory excluded pursuant to subclause (ii) or (iii) of this clause (g) having an aggregate Inventory Value not to exceed $5,000,000 at any time may qualify as Eligible Inventory if (A) the applicable Loan Party has title to such Inventory at such time and (B) such Inventory is insured in a manner that is reasonably satisfactory to the Administrative Agent;

(h) that is located in any location leased by (i) the Parent Borrower or any wholly-owned Domestic Subsidiary Loan Party, in the case of the Domestic Borrowing Base, or (ii) the Canadian Subsidiary Borrower or any wholly-owned Canadian Subsidiary Loan Party, in the case of the Canadian Borrowing Base, in each case, unless (A) the lessor has delivered to the Administrative Agent a Collateral Access Agreement or (B) a Reserve for up to three months' rent, charges and other amounts due or to become due with respect to such facility has been established by the Administrative Agent in its Permitted Discretion;

(i) that is located in any third party warehouse or is in the possession of a bailee (other than a third party processor) and is not evidenced by a Document, unless (i) such warehouseman or bailee has delivered to the Administrative Agent a Collateral Access Agreement and such other documentation as the Administrative Agent may require or (ii) a Reserve has been established by the Administrative Agent in its Permitted Discretion;

(j) that is being processed offsite at a third party location or outside processor (unless (i) the Administrative Agent has received a Collateral Access Agreement from such location or processor with respect to such Inventory or (ii) a Reserve has been established by the Administrative Agent in respect of such Inventory), or is in-transit to or from said third party location or outside processor;

(k) that is a discontinued product or component thereof;

(l) that is the subject of a consignment by (i) the Parent Borrower or any Domestic Subsidiary Loan Party, in the case of the Domestic Borrowing Base, or (ii) the Canadian Subsidiary Borrower or any Canadian Subsidiary Loan Party, in the case of the Canadian Borrowing Base, as consignor;

(m) that contains or bears any intellectual property rights licensed to (i) the Parent Borrower or any Domestic Subsidiary Loan Party, in the case of the Domestic Borrowing Base, or (ii) the Canadian Subsidiary Borrower or any Canadian Subsidiary Loan Party, in the case of the Canadian Borrowing Base, in each case, unless the Administrative Agent is satisfied that it may sell or otherwise dispose of such Inventory without (A) infringing the rights of such licensor, (B) materially violating any contract with such licensor or (C) incurring any liability with respect to payment of royalties other than royalties incurred pursuant to sale of such Inventory under the current licensing agreement;

(n) that is not reflected in the current inventory records of (i) the Parent Borrower or any wholly-owned Domestic Subsidiary Loan Party, in the case of the Domestic Borrowing Base, or (ii) the Canadian Subsidiary Borrower or any wholly-owned Canadian Subsidiary Loan Party, in the case of the Canadian Borrowing Base;

(o) any portion of the Inventory Value that is attributable to intercompany profit among the applicable Loan Party or its Affiliates; or

(p) that is deemed ineligible by the Administrative Agent in its Permitted Discretion.

"Eligible Machinery and Equipment" means the equipment listed on Schedule 1.01(a) and any additional equipment acquired after the Effective Date, in each case that is owned by (x) the Parent Borrower or any wholly-owned Domestic Subsidiary Loan Party, in the case of the Domestic Borrowing Base, or (y) the Canadian Subsidiary Borrower or any wholly-owned Canadian Subsidiary Loan Party, in the case of the Canadian Borrowing Base, in each case (i) that is acceptable in the Permitted Discretion of the Administrative Agent for inclusion in the applicable Borrowing Base, (ii) in respect of which an appraisal report has been delivered to the Administrative Agent in form, scope and substance reasonably satisfactory to the Administrative Agent (it being understood and agreed that, except as the Administrative Agent may otherwise notify the Parent Borrower otherwise (orally or in writing), appraisal reports delivered and satisfactory to the Prepetition Agent prior to the Petition Date shall be deemed delivered and satisfactory to the Administrative Agent) and (iii) in respect of which the Administrative Agent is satisfied that, after giving effect to the Orders and the Canadian Order, all actions necessary in order to create valid first priority Liens on such equipment have been taken, and, in each case, meeting each of the following requirements:

(a) (i) the Parent Borrower or the applicable Domestic Subsidiary Loan Party, in the case of the Domestic Borrowing Base, or (ii) the Canadian Subsidiary Borrower or the applicable Canadian Subsidiary Loan Party, in the case of the Canadian Borrowing Base, in each case has good title to such equipment and solely to the extent that no other Person has any direct or indirect ownership, interest or title;

(b) (i) the Parent Borrower or the applicable Domestic Subsidiary Loan Party, in the case of the Domestic Borrowing Base, or (ii) the Canadian Subsidiary Borrower or the applicable Canadian Subsidiary Loan Party, in the case of the Canadian Borrowing Base, has the right to subject such equipment to a Lien in favor of the Administrative Agent; and such equipment is

subject to a first priority perfected Lien in favor of the Administrative Agent (other than CCAA Charges in respect of the equipment of the Canadian Subsidiary Borrower and the Canadian Subsidiary Loan Parties) and is free and clear of all other Liens of any nature whatsoever (except for Permitted Encumbrances that do not have priority over the Lien in favor of the Administrative Agent);

(c) the full purchase price for such equipment has been paid by (i) the Parent Borrower or the applicable Domestic Subsidiary Loan Party, in the case of the Domestic Borrowing Base, or (ii) the Canadian Subsidiary Borrower or the applicable Canadian Subsidiary Loan Party, in the case of the Canadian Borrowing Base;

(d) such equipment is located on premises (i) owned by (A) the Parent Borrower or the applicable Domestic Subsidiary Loan Party, in the case of the Domestic Borrowing Base, or (B) the Canadian Subsidiary Borrower or the applicable Canadian Subsidiary Loan Party, in the case of the Canadian Borrowing Base, and, in each case, subject to a first priority perfected Lien in favor of the Administrative Agent (other than CCAA Charges in respect of premises of the Canadian Subsidiary Borrower and the Canadian Subsidiary Loan Parties), or (ii) leased by (A) the Parent Borrower or the applicable Domestic Subsidiary Loan Party, in the case of the Domestic Borrowing Base, or (B) the Canadian Subsidiary Borrower or the applicable Canadian Subsidiary Loan Party, in the case of the Canadian Borrowing Base, in each case, where (x) the lessor has delivered to the Administrative Agent a Collateral Access Agreement or (y) a Reserve for up to three months' rent, charges and other amounts due or to become due with respect to such facility has been established by the Administrative Agent in its Permitted Discretion;

(e) such equipment is in good working order and condition (ordinary wear and tear excepted);

(f) such equipment is not subject to any agreement (other than the Loan Documents, the Prepetition Loan Documents and the Senior Secured Notes Documents) that restricts the ability of (i) the Parent Borrower or the applicable Domestic Subsidiary Loan Party, in the case of the Domestic Borrowing Base, or (ii) the Canadian Subsidiary Borrower or the applicable Canadian Subsidiary Loan Party, in the case of the Canadian Borrowing Base, to use, sell, transport or dispose of such equipment or that restricts the Administrative Agent's ability to take possession of, sell or otherwise dispose of such equipment; and

(g) such equipment does not constitute "fixtures" under the applicable laws of the jurisdiction in which such equipment is located (unless the Administrative Agent is satisfied that all actions necessary to create a perfected first priority Lien (subject to the Liens described in clauses (a) and (b) (to the extent that (i) the applicable warehouseman, bailee or other Person described in clause (b) of the definition of "Permitted Encumbrance" has delivered to the Administrative Agent a Collateral Access Agreement or (ii) a Reserve has been established by the Administrative Agent in respect of such equipment) of the definition of "Permitted Encumbrances") in favor of the Administrative Agent on such fixtures have been taken).

"Eligible Real Property" means the real property listed on Schedule 1.02 owned by (x) the Parent Borrower or any wholly-owned Domestic Subsidiary Loan Party, in the case of the Domestic Borrowing Base, or (y) the Canadian Subsidiary Borrower or any wholly-owned Canadian Subsidiary Loan Party, in the case of the Canadian Borrowing Base, and meeting each of the following requirements:

(a) in respect of which an appraisal report has been delivered to the Administrative Agent in form, scope and substance reasonably satisfactory to the Administrative Agent (it being understood and agreed that, except as the Administrative Agent may otherwise notify the Parent Borrower (orally or in writing), appraisal reports delivered and satisfactory to the Prepetition Agent prior to the Petition Date shall be deemed delivered and satisfactory to the Administrative Agent);

(b) in respect of which the Administrative Agent is satisfied that all actions necessary in order to create a perfected first priority Lien (subject to the CCAA Charges in respect of real property of the Canadian Subsidiary Borrower and the Canadian Subsidiary Loan Parties and Liens described in clauses (a), (b) and (f) of the definition of "Permitted Encumbrances") in favor of the Administrative Agent on such real property have been taken, including the filing, registration and recording of the applicable Mortgage (or the delivery of the applicable Mortgage to the title insurance company for filing, registration or recording) to the extent the Administrative Agent notifies the Parent Borrower (orally or in writing) that it believes such actions to be necessary;

(c) that is adequately protected by valid title insurance with endorsements and in amounts reasonably acceptable to the Administrative Agent, insuring that the Administrative Agent, for the benefit of the Lenders, shall have a perfected first priority Lien (subject to Liens described in clauses (a), (b) and (f) of the definition of "Permitted Encumbrances") on such real property, evidence of which shall have been provided in form and substance reasonably satisfactory to the Administrative Agent, to the extent the Administrative Agent notifies the Parent Borrower (orally or in writing) that it believes such insurance to be necessary; and

(d) to the extent the Administrative Agent notifies the Parent Borrower (orally or in writing) that it believes such surveys, opinions and certificates to be necessary, (i) a Canadian or other non-U.S. survey has been delivered for which all necessary fees have been paid and which is dated no more than 30 days prior to the date on which the applicable Mortgage is registered or recorded, certified to the Administrative Agent and the issuer of the title insurance policy in a manner reasonably satisfactory to the Administrative Agent by a land surveyor duly registered and licensed in the state or province in which such Eligible Real Property is located and reasonably acceptable to the Administrative Agent, and shows all buildings and other improvements, any material offsite improvements, the location of any easements, parking spaces, rights of way, building setback lines and other dimensional regulations and the absence of encroachments, either by such improvements or on to such property, and other defects, other than encroachments and other defects reasonably acceptable to the Administrative Agent and (ii) in respect of which (A) the Parent Borrower or the applicable Domestic Subsidiary Loan Party, in the case of the Domestic Borrowing Base, or (B) the Canadian Subsidiary Borrower or the applicable Canadian Subsidiary Loan Party, in the case of the Canadian Borrowing Base, shall have used its commercially reasonable efforts to obtain estoppel certificates executed by all tenants of such Eligible Real Property and such other consents, agreements and confirmations of lessors and third parties have been delivered as the Administrative Agent may deem necessary or desirable, together with evidence that all other actions that the Administrative Agent may deem necessary or desirable in order to create, after giving effect to the Orders and the Canadian

Orders, perfected first priority Liens on the property described in the applicable Mortgage have been taken (subject to the CCAA Charges in respect of real property of the Canadian Subsidiary Borrower and the Canadian Subsidiary Loan Parties).

"Environmental Laws" means all treaties, laws, rules, regulations, codes, ordinances, orders, decrees, directives, judgments, injunctions, notices or binding agreements issued, promulgated or entered into by or with any Governmental Authority, relating in any way to the environment, the preservation or reclamation of natural resources, the generation, management, Release of, or exposure to, any Hazardous Material or to occupational health and safety matters.

"Environmental Liability" means any liability, obligation, claim, action, suit, judgment or order under or relating to any Environmental Law for any damages, injunctive relief, losses, fines, penalties, fees, expenses (including reasonable fees and expenses of attorneys and consultants) or costs, whether contingent or otherwise, including those arising from or relating to (a) any actual or alleged violation of any Environmental Law or permit, license or approval issued thereunder, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the Release of any Hazardous Materials or the presence of any Hazardous Materials in, on or under any real property or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"Equity Interests" means shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity ownership interests in a Person, and any warrants, options or other rights entitling the holder thereof to purchase or acquire any such equity interest.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time.

"ERISA Affiliate" means any trade or business (whether or not incorporated) that, together with the Parent Borrower, is treated as a single employer under Section 414(b) or (c) of the Code or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

"ERISA Event" means (a) any "reportable event", as defined in Section 4043 of ERISA or the regulations issued thereunder with respect to a Plan (other than an event for which the 30-day notice period is waived), (b) any failure by any Plan to satisfy the minimum funding standard (within the meaning of Section 412 of the Code or Section 302 of ERISA) applicable to such Plan whether or not waived, (c) the filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan, (d) the incurrence by the Parent Borrower or any of its ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Plan, (e) the receipt by the Parent Borrower or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any Plan or Multiemployer Plan, or the commencement of proceedings by the PBGC to terminate a Plan or Multiemployer Plan or the occurrence of any event or condition which could reasonably be expected to constitute grounds under ERISA for the termination of or the appointment of a trustee to administer any Plan, in each case where Plan assets are not sufficient to pay all Plan liabilities, (f) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon the Parent Borrower or any ERISA Affiliate, (g) the incurrence by the Parent Borrower or any of its ERISA Affiliates of any liability with respect to the withdrawal or partial withdrawal from any Plan or Multiemployer Plan, (h) the receipt by the Parent Borrower or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from the Parent Borrower or any ERISA Affiliate of any notice,

concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA, (i) a determination that any Plan is, or is expected to be, in "at-risk" status (as defined in Section 303(i)(4) of ERISA or Section 430(i)(4) of the Code), (j) the occurrence of a nonexempt "prohibited transaction" with respect to which the Parent Borrower or any ERISA Affiliate is a "disqualified individual" (within the meaning of Section 4975 of the Code) or a "party in interest" (within the meaning of Section 406 of ERISA) or which could otherwise result in liability to the Parent Borrower or any ERISA Affiliate or (k) any other event or condition with respect to a Plan or Multiemployer Plan that could result in material liability of the Parent Borrower or any Subsidiary.

"Eurodollar", when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Adjusted LIBO Rate (other than pursuant to the definition of Alternate Base Rate or U.S. Base Rate).

"Event of Default" has the meaning assigned to such term in Article VII.

"Exchange Act" means the Securities Exchange Act of 1934, as amended.

"Exchange Rate" means, on any day, for purposes of determining the U.S. Dollar Equivalent of Canadian Dollars, the rate at which Canadian Dollars may be exchanged into U.S. Dollars at the time of determination on such day on the Reuters WRLD Page for Canadian Dollars. In the event that such rate does not appear on any Reuters WRLD Page, the Exchange Rate shall be determined by reference to such other publicly available service for displaying exchange rates as may be agreed upon by the Administrative Agent and the Parent Borrower, or, in the absence of such an agreement, such Exchange Rate shall instead be the arithmetic average of the spot rates of exchange of the Administrative Agent in the market where its foreign currency exchange operations in respect of Canadian Dollars are then being conducted, at or about such time as the Administrative Agent shall elect after determining that such rates shall be the basis for determining the Exchange Rate, on such date for the purchase of U.S. Dollars for delivery two Business Days later, provided that if at the time of any such determination, for any reason, no such spot rate is being quoted, the Administrative Agent may use any reasonable method it deems appropriate to determine such rate, and such determination shall be conclusive absent manifest error.

"Excluded Taxes" means, with respect to the Administrative Agent, any Lender, the Issuing Bank or any other recipient of any payment to be made by or on account of any obligation of any Loan Party hereunder,

(a) income or franchise taxes imposed on (or measured by) its net income by the United States of America or Canada, or by the jurisdiction under the laws of which such recipient is organized or in which its principal office is located or, in the case of the Administrative Agent, the Issuing Bank or any Lender, in which its applicable lending office is located, or any amount withheld on account of such tax pursuant to the laws of Canada or any province or territory therein;

(b) any branch profits taxes imposed by the United States of America or Canada or any similar tax imposed by any other jurisdiction described in clause (a) above;

(c) any withholding tax that is attributable to the Administrative Agent's, the Issuing Bank's or a Lender's failure to comply with Section 2.16(e);

(d) in the case of the Administrative Agent, the Issuing Bank or any Lender (other than an assignee pursuant to a request by a Borrower under Section 2.18(b)), any withholding tax imposed by the United States of America that is in effect and would apply to amounts payable to the Administrative Agent, the Issuing Bank or such Lender at the time the Administrative Agent, the Issuing Bank or such Lender became a party to this Agreement (or designates a new lending office), except to the extent that (i) the Administrative Agent, the Issuing Bank or such Lender (or its assignor, if any) was entitled, at the time of designation of a new lending office (or assignment), to receive additional amounts from a Loan Party with respect to any withholding tax pursuant to Section 2.16(a) or (ii) such withholding tax shall have resulted from the making of any payment to a location other than the office designated by the Administrative Agent, the Issuing Bank or such Lender for the receipt of payments of the applicable type; and

(e) any withholding tax imposed under the laws of Canada or any province or territory therein that is in effect and would apply to amounts payable to the Administrative Agent, the Issuing Bank or any Lender, were such amounts paid at the time the Administrative Agent, the Issuing Bank or such Lender, as the case may be, became a party to this Agreement (or designates a new lending office), except any such withholding tax that would not have arisen but for (i) an assignment made pursuant to a request by a Borrower under Section 2.18(b) or (ii) the making of any payment to a location other than the office designated by the Administrative Agent, the Issuing Bank or Lender, as the case may be, for the receipt of payments of the applicable type.

"Facility Fee" means $1,120,000, payable by the Parent Borrower to the Administrative Agent for the accounts of the respective Revolving Lenders ratably in accordance with their Revolving Commitments.

"Fair Labor Standards Act" means the Fair Labor Standards Act, 29 U.S.C. §§ 201 et seq.

"Federal Funds Effective Rate" means, for any day, the weighted average (rounded upwards, if necessary, to the next 1/100 of 1%) of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average (rounded upwards, if necessary, to the next 1/100 of 1%) of the quotations for such day for such transactions received by the Administrative Agent from three Federal funds brokers of recognized standing selected by it.

"Final Order" has the meaning assigned to such term in Section 4.02(a)(iii).

"Final Order Date" means the day on which the Final Order is issued by the Bankruptcy Court.

"Financial Officer" means, with respect to any Person, the chief financial officer, principal accounting officer, vice president of finance, assistant treasurer, treasurer or controller of such Person. Unless otherwise expressly indicated, "Financial Officer" shall mean a Financial Officer of the Parent Borrower.

"Forecast" means the weekly Cash Flow Forecast and the budget prepared by the Parent Borrower (as may be periodically updated and supplemented by the Parent Borrower), which shall reflect the Parent Borrower's projection of all cash receipts and disbursements of the Parent Borrower and the Subsidiaries for the thirteen week period ended June 26, 2009. Unless the context specifically requires otherwise, the Forecast shall refer to the Forecast delivered to the Administrative Agent by the Parent Borrower on April 8, 2009.

"Foreign Lender" means any Lender that is organized under the laws of a jurisdiction other than that in which the Parent Borrower is located except that in respect of the Canadian Subsidiary Borrower or any Canadian Subsidiary Loan Party, "Foreign Lender" means a Lender that is not a Canadian Resident. For purposes of this definition, the United States of America, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

"Foreign Subsidiary" means any Subsidiary that is organized under the laws of a jurisdiction other than the United States of America, any State thereof or the District of Columbia.

"Foreign Subsidiary Loan Party" means any Foreign Subsidiary (other than the Canadian Subsidiary Borrower), including any Canadian Subsidiary Loan Party but excluding (a) Indalex UK Limited and (b) any other Foreign Subsidiary (i) that is prohibited under mandatory provisions of its organizational documents, applicable law or contractual restrictions in existence on the date such Foreign Subsidiary became a Subsidiary (and not created in anticipation thereof) from guaranteeing, providing Collateral to secure, or otherwise becoming liable for, the Secured Obligations or (ii) in the event that any officer, director or employee thereof would more likely than not incur liability under applicable law (including, for the avoidance of doubt, any financial assistance laws of England and Wales or the United Kingdom) in connection with such Foreign Subsidiary being deemed a "Foreign Subsidiary Loan Party" under the Loan Documents or from guaranteeing, providing Collateral to secure, or otherwise becoming liable for, the Secured Obligations.

"Fronting Fee" has the meaning assigned to such term in Section 2.11(b).

"Funding Account" means Account No. 3751572376 maintained at Bank of America, N.A. or such other account identified in writing by the Parent Borrower to the Administrative Agent.

"GAAP" means generally accepted accounting principles in the United States of America.

"Governmental Authority" means the government of the United States of America, any other nation or any political subdivision thereof, whether state, provincial, territorial or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

"Granting Lender" has the meaning assigned to such term in Section 9.04(e).

"Guarantee" of or by any Person (the "guarantor") means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (the "primary obligor") in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation or (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or obligation, provided that the term Guarantee shall not include endorsements for collection or deposit in the ordinary course of business; and provided further that the amount of any Guarantee shall be deemed to be equal to the lesser of (i) an

amount equal to the stated or determinable amount of the primary obligation in respect of which such Guarantee is made and (ii) (x) the maximum amount for which such guarantor may be liable pursuant to the terms of the instrument embodying such Guarantee or (y) if such Guarantee is not an unconditional guarantee of the entire amount of the primary obligation in respect of which such Guarantee is made and such maximum amount is not stated or determinable, the amount of such guarantor's maximum reasonably-anticipated liability in respect thereof as determined by such guarantor in good faith.

"Guaranteed Obligations" has the meaning assigned to such term in Section 10.01(a).

"Guaranteed Parties" has the meaning assigned to such term in Section 10.09.

"Hazardous Materials" means (i) any petroleum products or byproducts and all other hydrocarbons, coal ash, radon gas, asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls, chlorofluorocarbons and other ozone-depleting substances, and toxic mold; and (ii) any chemical, material, substance or waste that is prohibited, limited or regulated by or pursuant to any Environmental Law.

"Holdings" has the meaning assigned to such term in the preamble to this Agreement.

"Indebtedness" of any Person means, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person, (d) all obligations of such Person in respect of the deferred purchase price of property or services (excluding (x) deferred compensation arrangements and (y) accounts payable that are not more than 60 days past due, in each case entered into or incurred, as the case may be, in the ordinary course of business), (e) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed, (f) all Guarantees by such Person of Indebtedness of others, (g) all Capital Lease Obligations of such Person, (h) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guaranty, (i) all obligations, contingent or otherwise, of such Person in respect of bankers' acceptances and (j) any other Off-Balance Sheet Liability. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person's ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor. The amount of Indebtedness of any Person for purposes of clause (e) above shall (unless such Indebtedness has been assumed by, or is otherwise recourse to, such Person) be deemed to be equal to the lesser of (i) the aggregate unpaid amount of such Indebtedness and (ii) the fair market value of the property encumbered thereby as determined by such Person in good faith, and the amount of any contingent Indebtedness of any Person shall be the maximum reasonably anticipated liability in respect thereof as determined by such Person in good faith.

"Indemnified Taxes" means Taxes other than Excluded Taxes.

"Indemnitee" has the meaning assigned to such term in Section 9.03(b).

"Interest Election Request" means a request by the applicable Borrower to convert or continue a Revolving Borrowing in accordance with Section 2.07.

"Interest Payment Date" means (a) with respect to any ABR, U.S. Base Rate or Canadian Base Rate Loan, the last day of each calendar month and the Termination Date and (b) with respect to any

Eurodollar Loan, the last day of the Interest Period applicable to the Borrowing of which such Loan is a part.

"Interest Period" means, with respect to any Eurodollar Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is one month thereafter, as the applicable Borrower may elect, provided that (a) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day and (b) any Interest Period that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period. For purposes hereof, the date of a Eurodollar Borrowing initially shall be the date on which such Borrowing is made and thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

"Interim Cash Collateral Order" means the interim order (I) authorizing the use of Prepetition Lenders' cash collateral under 11 U.S.C. § 363, (II) granting adequate protection under 11 U.S.C. §§ 361, 362 and 363 and (III) scheduling a final hearing under Bankruptcy Rule 4001(b) entered by the Bankruptcy Court on March 23, 2009.

"Interim Order" has the meaning assigned to such term in Section 4.01(m).

"Inventory" has the meaning assigned to such term in the Security Agreements.

"Inventory Value" means, at any time, with respect to the Inventory of any Loan Party, the U.S. Dollar Equivalent of the standard cost of such Inventory carried on the records of such Loan Party at such time (valued on a first-in, first-out basis) less any markup on any such Inventory received from an Affiliate, provided that in the event variances under the standard cost method (a) are capitalized, favorable variances shall be deducted from Inventory and unfavorable variances shall not be added to Inventory, or (b) are expensed, a reserve shall be determined in the Administrative Agent's Permitted Discretion as appropriate in order to adjust the standard cost of Inventory to approximate actual cost.

"Issuing Bank" means JPMorgan Chase Bank, N.A., in its capacity as the issuer of Letters of Credit.

"Joinder Agreement" has the meaning assigned to such term in Section 5.11(a).

"Judgment Currency" has the meaning assigned to such term in Section 9.19(a).

"Judgment Currency Conversion Date" has the meaning assigned to such term in Section 9.19(a).

"L/C Collateral Account" has the meaning assigned to such term in Section 2.04(h).

"L/C Disbursement" means a U.S. L/C Disbursement or Canadian L/C Disbursement, as the context may require.

"Lenders" means (a) the Persons listed on the Commitment Schedule, (b) the Term Lenders and (c) any other Person that shall have become a party hereto pursuant to Section 9.04, in each case other than any such Person that ceases to be a party hereto pursuant to Section 9.02(d), Section

9.02(e) or Section 9.04. References to any Lender in this Agreement or any other Loan Document shall be deemed to mean such Lender's affiliated Canadian Lending Office, where applicable.

"Letter of Credit" means any letter of credit deemed issued pursuant to Section 2.04(a).

"LIBO Rate" means, with respect to any Eurodollar Borrowing for any Interest Period, the rate appearing on Reuters BBA Libor Rates Page 3750 (or on any successor or substitute page of such service, or any successor to or substitute for such service, providing rate quotations comparable to those currently provided on such page of such service, as determined by the Administrative Agent from time to time for purposes of providing quotations of interest rates applicable to U.S. Dollar deposits in the London interbank market) at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period, as the rate for U.S. Dollar deposits in an amount comparable to the amount of such Eurodollar Borrowing and with a maturity comparable to such Interest Period. In the event that such rate is not available at such time for any reason, then the "LIBO Rate" with respect to such Eurodollar Borrowing for such Interest Period shall be the rate at which U.S. Dollar deposits of an amount comparable to the amount of such Eurodollar Borrowing and for a maturity comparable to such Interest Period are offered by the principal London office of the Administrative Agent in immediately available funds in the London interbank market at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period.

"Lien" means, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, charge (including any court-ordered charge) or security interest in, on or of such asset, (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset and (c) in the case of securities owned by the applicable Person, any purchase option, call or similar right of a third party with respect to such securities.

"Loan Documents" means this Agreement, any promissory notes issued pursuant to this Agreement, the Collateral Documents, the Loan Guaranty and all other agreements, instruments, documents and certificates identified in Section 4.01 executed and delivered to, or in favor of, the Administrative Agent or any Lenders and including all other pledges, powers of attorney, consents, assignments, contracts and letter of credit agreements whether heretofore, now or hereafter executed by or on behalf of any Loan Party, or any employee of any Loan Party, and delivered to the Administrative Agent or any Lender in connection with the Agreement or the transactions contemplated thereby. Any reference in the Agreement or any other Loan Document to a Loan Document shall include all appendices, exhibits or schedules thereto, and all amendments, restatements, supplements or other modifications thereto, and shall refer to the Agreement or such Loan Document as the same may be in effect at any and all times such reference becomes operative.

"Loan Guarantors" means, collectively, each of Holdings, the Parent Borrower (with respect to the Canadian Obligations and the other Loan Parties' Banking Services Obligations), the Canadian Subsidiary Borrower (with respect to the U.S. Obligations and the other Loan Parties' Banking Services Obligations) and the Subsidiary Loan Parties.

"Loan Guaranty" means Article X of this Agreement and, to the extent necessary, each separate Guarantee, in form and substance reasonably satisfactory to the Administrative Agent, delivered by each Loan Guarantor that is a Foreign Subsidiary (which Guarantee shall be governed by the laws of the applicable jurisdiction in which such Foreign Subsidiary is located), as it may be amended or modified and in effect from time to time.

"Loan Parties" means Holdings, the Parent Borrower, the Canadian Subsidiary Borrower and the Subsidiary Loan Parties.

"Loans" means the loans and advances made by the Lenders pursuant to this Agreement, including pursuant to Sections 2.01(c), 2.01(d) and 2.01(e).

"Local Time" means (a) with respect to a Loan or Borrowing made to the Parent Borrower or a Letter of Credit deemed issued, pursuant to Section 2.04(a), for the account of the Parent Borrower or a Domestic Subsidiary, New York City time, and (b) with respect to a Loan or Borrowing made to the Canadian Subsidiary Borrower or a Letter of Credit deemed issued, pursuant to Section 2.04(a), for the account of the Canadian Subsidiary Borrower or a Foreign Subsidiary, Toronto time.

"Material Adverse Effect" means a material adverse effect on (a) the business, assets, results of operations or financial condition of Holdings, the Parent Borrower and the Subsidiaries, taken as a whole, (b) the ability of any Loan Party to perform any of its material obligations under any Loan Document, (c) the Collateral, taken as a whole, or the Administrative Agent's Liens (on behalf of itself and the Lenders) on the Collateral, taken as a whole, or the priority of such Liens, or (d) the rights and remedies, taken as a whole, of the Administrative Agent, the Issuing Bank or the Lenders under the Loan Documents, provided that the filing of the Bankruptcy Cases and the Canadian Proceeding, the CCAA Charges and the DIP Lenders' Charge and the consequences that customarily result from proceedings under Chapter 11 of the Bankruptcy Code or the CCAA, as the case may be, shall not be considered in determining whether there has been a "Material Adverse Effect".

"Material Indebtedness" means Indebtedness (other than the Loans and Letters of Credit), or obligations in respect of one or more Swap Agreements, of any one or more of Holdings, the Parent Borrower and the Subsidiaries in an aggregate principal amount exceeding $1,000,000. For purposes of determining Material Indebtedness, the "principal amount" of the obligations of Holdings, the Parent Borrower or any Subsidiary in respect of any Swap Agreement at any time shall be the maximum aggregate amount (giving effect to any netting agreements) that Holdings, the Parent Borrower or such Subsidiary would be required to pay if such Swap Agreement were terminated at such time.

"Maturity Date" means the date that is 180 days after the Effective Date, or any earlier date on which the Commitments are reduced to zero or otherwise terminated pursuant to the terms hereof.

"Moody's" means Moody's Investors Service, Inc.

"Mortgage" means a Canadian Mortgage or a Canadian Hypothec in respect of Mortgaged Property, as the context may require.

"Mortgaged Property" means, initially, each parcel of real property and the improvements thereto owned by a Loan Party and identified on Schedule 1.03, and includes each other parcel of real property and the improvements thereto owned by a Loan Party with respect to which a Lien to secure any of the Secured Obligations is granted pursuant to Section 5.11 or by order of the Bankruptcy Court or Canadian Court.

"Monitor" means FTI Consulting Canada ULC in its capacity as court appointed monitor in the Canadian Proceeding.

"Multiemployer Plan" means a multiemployer plan as defined in Section 4001(a)(3) of ERISA that is maintained, sponsored or contributed to by the Parent Borrower or any ERISA Affiliate.

"Net Orderly Liquidation Value" means, at any time, with respect to Inventory, Eligible Real Property or Eligible Machinery and Equipment of any Person, the orderly liquidation value thereof (or, in the case of calculations made in respect of the Canadian Borrowing Base, the U.S. Dollar Equivalent of the orderly liquidation value thereof) as determined in a manner reasonably acceptable to the Administrative Agent by an appraiser reasonably acceptable to the Administrative Agent, net of all costs of liquidation thereof.

"Net Proceeds" means, with respect to any event, (a) the cash proceeds received in respect of such event, including (i) any cash received in respect of any non-cash proceeds (including any cash payments received by way of deferred payment of principal pursuant to a note or installment receivable or purchase price adjustment receivable, earn-out or otherwise, but excluding any reasonable interest payments), but only as and when received, (ii) in the case of a casualty, cash insurance proceeds, and (iii) in the case of a condemnation or similar event, cash condemnation awards and similar payments received in connection therewith, minus (b) the sum of (i) all reasonable fees and out-of-pocket expenses (including commissions and legal, accounting and other professional and transaction fees) paid by Holdings, the Parent Borrower and the Subsidiaries to third parties (other than Affiliates) in connection with such event, (ii) in the case of a sale, transfer or other disposition of an asset (including pursuant to a casualty or a condemnation or similar proceeding), the amount of all payments that are permitted hereunder and are made by Holdings, the Parent Borrower and the Subsidiaries as a result of such event to repay Indebtedness (other than Loans) secured by such asset or otherwise subject to mandatory prepayment as a result of such event, and (iii) in the case of a disposition by any Loan Party of any asset, any stamp taxes or similar taxes paid or reasonably estimated to be payable as a result of such disposition.

"Net Recovery Liquidation Rate" means, at any time, with respect to Inventory of any Person, the quotient (expressed as a percentage) of (i) the Net Orderly Liquidation Value thereof divided by (ii) the Inventory Value thereof (or, in the case of calculations made in respect of the Canadian Borrowing Base, the U.S. Dollar Equivalent of the Inventory Value thereof), determined on the basis of the then most recent independent Inventory appraisal in form, scope and substance reasonably satisfactory to the Administrative Agent.

"Non-Paying Guarantor" has the meaning assigned to such term in Section 10.10(a).

"Obligated Party" has the meaning assigned to such term in Section 10.02.

"Obligation Currency" has the meaning assigned to such term in Section 9.19(a).

"Obligations" means, collectively, the U.S. Obligations and the Canadian Obligations.

"Off-Balance Sheet Liability" of a Person means (a) any repurchase obligation or liability of such Person with respect to accounts or notes receivable sold by such Person to the extent such amounts could reasonably be expected to become due, (b) any indebtedness, liability or monetary obligation under any so-called "synthetic lease" transaction entered into by such Person or (c) any indebtedness, liability or obligation arising with respect to any other transaction that is the functional equivalent of or takes the place of borrowing but that does not constitute a liability on the balance sheets of such Person (other than operating leases).

"Orders" means the Interim Order and the Final Order.

"Other Eligible Inventory" means, at any time, the portion of Eligible Inventory of (x) the Parent Borrower and the wholly-owned Domestic Subsidiary Loan Parties at such time, in the case of the Domestic Borrowing Base, or (y) the Canadian Subsidiary Borrower and the wholly-owned Canadian

Subsidiary Loan Parties at such time, in the case of the Canadian Borrowing Base, in each case that is comprised of Inventory other than aluminum billets and logs as shown on the applicable Loan Party's Inventory records in accordance with such Loan Party's current and historical accounting practices.

"Other Taxes" means any and all present or future recording, stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made under any Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, any Loan Document, provided that, for the avoidance of doubt, Other Taxes shall not include any income taxes or withholding taxes.

"Parent Borrower" has the meaning assigned to such term in the preamble to this Agreement.

"Participant" has the meaning assigned to such term in Section 9.04(c)(i).

"Participation Fee" has the meaning assigned to such term in Section 2.11(b).

"Participant Register" has the meaning assigned to such term in Section 9.04(c).

"Paying Guarantor" has the meaning assigned to such term in Section 10.10(a).

"PBGC" means the Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

"Permitted Discretion" means a determination made in good faith and in the exercise of reasonable (from the perspective of a secured asset-based lender) business judgment.

"Permitted Encumbrances" means:

(a) Liens imposed by law for Taxes (including customs duties), assessments or other governmental charges or levies that are not yet due, are being contested in compliance with Section 5.04 or are permitted to be due hereunder;

(b) carriers', warehousemen's, mechanics', materialmen's, suppliers', repairmen's, construction, builders', landlords' and other like Liens imposed by statutory or common law, arising in the ordinary course of business and securing obligations that are not overdue by more than 60 days or are being contested in compliance with Section 5.04;

(c) pledges and deposits made in the ordinary course of business in compliance with workers' compensation, unemployment insurance and other social security laws or regulations;

(d) deposits to secure the performance of bids, tenders, trade contracts, government contracts, leases, statutory obligations, self-insurance or reinsurance obligations, stay customs, surety and appeal or similar bonds, performance bonds, security deposits (including (x) security deposits for import or customs duties and other amounts that are being contested in compliance with Section 5.04 and (y) customary security deposits for the payment of rent) and other obligations of a like nature, in each case in the ordinary course of business;

(e) judgment liens in respect of judgments that do not constitute an Event of Default hereunder;

(f) immaterial survey exceptions, easements, zoning restrictions, rights-of-way, agreements with Governmental Authorities disclosed by registered titles to the Mortgaged Properties and similar encumbrances on real property imposed by law or arising in the ordinary course of business that do not secure any monetary obligations and that either (i) in the aggregate do not materially detract from the value of the affected property or interfere with the ordinary conduct of business of the Parent Borrower or any Subsidiary or (ii) are described in a mortgage policy of the title insurance or surveys issued in favor of and accepted by the Administrative Agent or the Prepetition Agent with respect to any property;

(g) Liens arising from Permitted Investments described in clause (d) of the definition of the term "Permitted Investments";

(h) Canadian deemed statutory trusts or Liens for employee source deductions made under workers' compensation, unemployment insurance or other social security legislation and for goods and services under the Excise Tax Act (Canada); and

(i) deposits to secure utility bills approved by the Bankruptcy Court and, with respect to the Canadian Subsidiary Borrower or any Canadian Subsidiary Loan Party, the Canadian Court,

provided that the term "Permitted Encumbrances" shall not include any Lien securing Indebtedness (other than Indebtedness in respect of Permitted Investments described in clause (g) above), and provided further that notwithstanding anything to the contrary contained in this Agreement or any Collateral Document (including any provision for, reference to, or acknowledgement of, any Lien or Permitted Encumbrance), nothing herein and no approval by the Administrative Agent or the Lenders of any Lien or Permitted Encumbrance (whether such approval is oral or in writing) shall be construed as or deemed to constitute a subordination by the Administrative Agent or the Lenders of any security interest or other right, interest or Lien in or to the Collateral or any part thereof in favor of any Lien or Permitted Encumbrance or any holder of any Lien or Permitted Encumbrance, except to the extent specifically set forth herein or in such approval.

"Permitted Fee Receiver" means any Person that, with respect to any fees paid under Section 2.11(a) or Section 2.11(b) of this Agreement, delivers to the Administrative Agent, on or prior to the date on which such Person becomes a party hereto (and from time to time thereafter upon the request of the Parent Borrower and the Administrative Agent, unless such Person becomes legally unable to do so solely as a result of a Change in Law after becoming a party hereto), accurate and duly completed copies (in such number as requested) of one or more of Internal Revenue Service Forms W-9, W-8ECI, W-8EXP, W-8BEN or W-8IMY (together with, if applicable, one of the aforementioned forms duly completed from each direct or indirect beneficial owner of such Person), or any successor form thereto, that entitles such Person to a complete exemption from U.S. withholding tax on such payments (provided that, in the case of the Internal Revenue Service Form W-8BEN, a Person providing such form shall qualify as a Permitted Fee Receiver only if such form establishes such exemption on the basis of the "business profits" or "other income" articles of a tax treaty to which the United States is a party and provides a U.S. taxpayer identification number), in each case together with such supplementary documentation as may be prescribed by applicable law to permit the Parent Borrower or the Administrative Agent to determine whether such Person is entitled to such complete exemption.

"Permitted Investments" means:

(a) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America (or by any agency thereof to the

extent such obligations are backed by the full faith and credit of the United States of America), in each case maturing within one year from the date of acquisition thereof;

(b) investments in commercial paper maturing within 270 days from the date of acquisition thereof and having, at such date of acquisition, the highest credit rating obtainable from S&P or from Moody's;

(c) investments in certificates of deposit, banker's acceptances and time or demand deposits maturing within 365 days from the date of acquisition thereof issued or guaranteed by or placed with, and money market deposit accounts issued or offered by, any domestic office of any commercial bank organized under the laws of the United States of America or any State thereof which has a combined capital and surplus and undivided profits of not less than $500,000,000;

(d) fully collateralized repurchase agreements with a term of not more than 30 days for securities described in clause (a) above and entered into with a financial institution satisfying the criteria described in clause (c) above;

(e) investments in securities with maturities of 365 days or less from the date of acquisition thereof issued or fully guaranteed by any state, commonwealth or territory of the United States of America, or by any political subdivision or taxing authority thereof, and with a rating of A or higher by S&P and A2 or higher by Moody's;

(f) Indebtedness issued by Persons (other than the Sponsor or any Sponsor Affiliate) with a rating of A or higher by S&P and A2 or higher by Moody's;

(g) investments in any money market fund that invests at least 95% of its assets in securities of the types described in clauses (a) through (f) above; and

(h) in the case of the Canadian Subsidiary Borrower or any Foreign Subsidiary, (i) investments of the type and maturity described in clauses (a) through (g) above of foreign obligors, which investments or obligors (or the parents of such obligors) have ratings described in clause (b) above or equivalent ratings from comparable foreign rating agencies or (ii) investments of the type and maturity described in clauses (a) through (g) above of foreign obligors (or the parents of such obligors), which investments or obligors (or the parents of such obligors) are not rated as provided in such clauses or in clause (i) above but which are, in the reasonable judgment of the Parent Borrower, comparable in investment quality to such investments and obligors (or the parents of such obligors).

"Permitted Prepetition Payment" means a payment on account of any pre-petition claim set forth on Schedule 1.01(c) or approved by the Required Lenders, provided that no such payment shall be made after the occurrence and during the continuance of, or if such payment would result in, a Default.

"Person" means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

"Petition Date" shall have the meaning assigned to such term in the recitals to this Agreement.

"Plan" means any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA sponsored, maintained or contributed to by the Parent Borrower or any ERISA Affiliate. For the

avoidance of doubt, "Plan" does not include any Canadian Pension Plan or any Canadian Multi-Employer Plan.

"PP&E Component" means, at the time of any determination, (a) with respect to the Domestic Borrowing Base, an amount equal to the sum of (i) 85% of the Net Orderly Liquidation Value of Eligible Machinery and Equipment of the Parent Borrower and the wholly-owned Domestic Subsidiary Loan Parties at such time, provided that the aggregate amount determined pursuant to this subclause (a)(i) shall not constitute more than 25% of the aggregate Domestic Borrowing Base at such time, and (ii) the lesser of (A) 50% of the fair market value (as set forth in the then most recent independent appraisal in form, scope and substance reasonably satisfactory to the Administrative Agent) of Eligible Real Property of the Parent Borrower and the wholly-owned Domestic Subsidiary Loan Parties at such time, and (B) $6,000,000, and (b) with respect to the Canadian Borrowing Base, an amount equal to the sum of (i) 85% of the U.S. Dollar Equivalent of the Net Orderly Liquidation Value of Eligible Machinery and Equipment of the Canadian Subsidiary Borrower and the wholly-owned Canadian Subsidiary Loan Parties at such time, provided that the aggregate amount determined pursuant to this subclause (b)(i) shall not constitute more than 25% of the aggregate Canadian Borrowing Base at such time, and (ii) the lesser of (A) 50% of the U.S. Dollar Equivalent of the fair market value (as set forth in the then most recent independent appraisal in form, scope and substance reasonably satisfactory to the Administrative Agent) of Eligible Real Property of the Canadian Subsidiary Borrower and the wholly-owned Canadian Subsidiary Loan Parties at such time, and (B) $2,000,000. Notwithstanding the foregoing, (x) at the time of any determination, the aggregate amount of the PP&E Component with respect to the Domestic Borrowing Base and the Canadian Borrowing Base, on a combined basis, shall not exceed $30,000,000 and (y) the Parent Borrower shall have the option, at one time during the term of this Agreement, to reallocate the amounts between clauses (a)(ii)(B) and (b)(ii)(B) (so long as the aggregate amount under such clauses does not exceed $8,000,000).

"Prepetition Agent" means JPMorgan Chase Bank, N.A., in its capacity as Administrative Agent under the Prepetition Credit Agreement, and its successors in such capacity.

"Prepetition Banking Services Obligations" means the collective reference to the Banking Services Obligations under the Prepetition Credit Agreement owed to certain of the Lenders as of the Petition Date as identified on Schedule 1.01(e).

"Prepetition Credit Agreement" means the Amended and Restated Credit Agreement dated as of May 21, 2008, among Holdings, the Parent Borrower, the Canadian Subsidiary Borrower, the other Subsidiaries of the Parent Borrower party thereto, the Lenders named therein and the Prepetition Agent, as further amended as of November 25, 2008 and March 6, 2009.

"Prepetition Guarantors" means the "Loan Guarantors" under and as defined in the Prepetition Credit Agreement.

"Prepetition Indebtedness" means the Indebtedness and other obligations that are outstanding as of the Petition Date incurred by the Parent Borrower, the Canadian Subsidiary Borrower and the Prepetition Guarantors under the Prepetition Loan Documents and owed to the Prepetition Revolving Lenders. For the avoidance of doubt, Prepetition Indebtedness does not include any term loans made by the Sponsor or any Sponsor Affiliate under the Prepetition Credit Agreement or any accrued interest, fees or other amounts payable in respect thereof.

"Prepetition Letters of Credit" means the collective reference to the letters of credit issued and outstanding under the Prepetition Credit Agreement as of the Petition Date as identified on Schedule 1.01(b).

"Prepetition Loan Documents" means the "Loan Documents" under and as defined in the Prepetition Credit Agreement.

"Prepetition Revolving Lenders" means the lenders from time to time party to the Prepetition Credit Agreement, but excluding the Sponsor or any Sponsor Affiliate as a lender thereunder.

"Prepetition Revolving Loans" means the collective reference to the revolving loans outstanding under the Prepetition Credit Agreement as of the Petition Date as identified on Schedule 1.01(f).

"Prepetition Swap Obligations" means the collective reference to the Swap Obligations under the Prepetition Credit Agreement owed to certain of the Lenders or their affiliates as of the Petition Date as identified on Schedule 1.01(d), including Swap Obligations in connection with the Prior Swap.

"Prime Rate" means the rate of interest per annum publicly announced from time to time by JPMorgan Chase Bank, N.A., as its prime rate in effect at its principal office in New York City (the Prime Rate not being intended to be the lowest rate of interest charged by JPMorgan Chase Bank, N.A., in connection with extensions of credit to debtors).

"Priority Rules" means, with respect to any prepayment or repayment of Loans, the allocation by the Administrative Agent of the proceeds of such payments in the following order:

(a) for payments that are made in connection with a permanent partial reduction of the aggregate Revolving Commitments pursuant to Section 2.08, allocation to pay U.S. Revolving Loans to the extent of prepayments required to be made in order to comply with Section 2.08(b) after giving effect to such reduction;

(b) for payment that are made in connection with (or after) a total reduction or termination of the aggregate Revolving Commitments pursuant to Section 2.08 or Article VII, or an acceleration of Loans pursuant to Article VII, ratable allocation between the U.S. Revolving Loans and the Term Loans in proportion to the aggregate outstanding principal amount of each such Class of Loans; and

(c) for other prepayments or repayments, allocation (i) first, to the payment of the principal amount of outstanding U.S. Revolving Loans and (ii) second, after the principal amount of all outstanding U.S. Revolving Loans has been paid in full, to the payment of outstanding Term Loans.

"Prior Swap" means the ISDA Master Agreement, dated as of August 9, 2007, between the Parent Borrower and JPMorgan Chase Bank, N.A., acting in its individual capacity and not as Administrative Agent, as such agreement may be amended and restated in accordance with clause (d) of Schedule 5.15 or otherwise.

"Projections" has the meaning assigned to such term in Section 5.01(e).

"Proposed Change" has the meaning assigned to such term in Section 9.04(d).

"Register" has the meaning set forth in Section 9.04(b)(iv).

"Related Parties" means, with respect to any specified Person, such Person's Affiliates and the respective directors, officers, employees, agents and advisors of such Person and such Person's Affiliates.

"Release" means any actual or threatened release, spill, emission, leaking, dumping, injection, pouring, deposit, disposal, discharge, dispersal, leaching or migration into or through the environment (including ambient air, surface water, groundwater, land surface or subsurface strata) or within or upon any building, structure, facility or fixture.

"Replacement Liens" has the meaning set forth in Section 4.01(m).

"Report" means reports prepared by the Administrative Agent or another Person showing the results of appraisals, field examinations or audits pertaining to the Parent Borrower or any Subsidiary's assets from information furnished by or on behalf of the Parent Borrower or any such Subsidiary, after the Administrative Agent has exercised its rights of inspection pursuant to this Agreement, which Reports may be distributed to the Lenders by the Administrative Agent.

"Required Lenders" means, at any time, Lenders having Revolving Exposure and unused Revolving Commitments representing more than 50% of the sum of the aggregate Revolving Exposure and the aggregate unused Revolving Commitments at such time.

"Requirement of Law" means, with respect to any Person, (a) the charter, articles or certificate of organization or incorporation and by-laws or other organizational or governing documents of such Person and (b) any statute, law, treaty, rule, regulation, order, decree, writ, injunction or determination of any arbitrator or court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject, and including Environmental Laws.

"Reserves" means any and all reserves that the Administrative Agent deems necessary, in its Permitted Discretion, to maintain (including, without duplication, reserves for overdue or accrued and unpaid interest on the Secured Obligations, reserves for up to three months' rent at locations leased by any Loan Party and for consignee's, warehousemen's and bailee's charges (in each case to the extent the Inventory located at such leased location or warehouse or subject to such consignment or bailment is not covered by a Collateral Access Agreement), reserves for lower of cost or market Inventory valuation, reserves for Inventory shrinkage, reserves for customs charges and shipping charges related to any Inventory in transit, reserves for the Term Loans, reserves for Swap Obligations, reserves for priority claims of employees of the Canadian Subsidiary Borrower and the Canadian Subsidiary Loan Parties under the Wage Earners Protection Program Act (Canada) ("WEPP Reserves"), reserves for contingent liabilities of any Loan Party that are reasonably likely to become actual liabilities, reserves for the amount of the Carve-Out in an amount not to exceed the Carve-Out Cap, reserves for the CCAA Charges, reserves for uninsured losses of any Loan Party, reserves for uninsured, underinsured, un-indemnified or under-indemnified liabilities or potential liabilities with respect to any litigation that are reasonably likely to become actual liabilities and reserves for taxes, fees, assessments and other governmental charges and employee source deductions, workers' compensation obligations, vacation pay or pension fund obligations) with respect to the Collateral or any Loan Party. Any Reserve (including the amount of such Reserve) shall bear a reasonable relationship to the events, conditions or circumstances that are the basis for such Reserve. The amount of any Reserve shall not be duplicative of the amount of any other Reserve taken by any Loan Party with respect to the same events, conditions or circumstances. In the event that the Administrative Agent determines in its Permitted Discretion that (a) the events, conditions or circumstances underlying the maintenance of any Reserve shall cease to exist or (b) the liability that is the basis for any Reserve has been reduced, then such Reserve shall be rescinded or reduced in an amount as

determined in the Administrative Agent's Permitted Discretion, as applicable, at the request of the Parent Borrower. It is understood and agreed that WEPP Reserves and the reserve for the Directors Charge may, in the discretion of the Administrative Agent, be applied in whole or in part against the Domestic Borrowing Base instead of the Canadian Borrowing Base.

"Responsible Officer" means the chief executive officer or president of any Person or any Financial Officer of such Person, and any other officer of such Person with responsibility for the administration of the obligations of such Person under this Agreement. Unless otherwise expressly indicated, "Responsible Officer" shall mean a Responsible Officer of the Parent Borrower.

"Restricted Payment" means any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interests in Holdings, the Parent Borrower or any Subsidiary, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancelation or termination of any Equity Interests in Holdings, the Parent Borrower or any Subsidiary or any option, warrant or other right to acquire any such Equity Interests in Holdings, the Parent Borrower or any Subsidiary, or any other payment (including any payment under any Swap Agreement) that has a substantially similar effect to any of the foregoing, other than compensation in the ordinary course of business.

"Reuters Screen CDOR Page" means the display designated as page CDOR on the Reuters Monitor Money Rates Service or such other page as may, from time to time, replace that page on that service for the purpose of displaying bid quotations for bankers' acceptances accepted by leading Canadian banks.

"Revolving Commitment" means, with respect to each Revolving Lender, the commitment, if any, of such Lender to make Revolving Loans and to acquire participations in Letters of Credit hereunder during the Availability Period, expressed as an amount in U.S. Dollars representing the maximum potential aggregate amount of such Lender's Revolving Exposure, as such commitment may be (a) reduced from time to time pursuant to Section 2.08 or Section 2.18(b) or (b) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 9.02(d), Section 9.02(e) or Section 9.04. The initial amount of each Revolving Lender's Revolving Commitment is set forth on the Commitment Schedule directly below the column entitled "Revolving Commitments" or in the Assignment and Assumption pursuant to which such Lender shall have assumed its Revolving Commitment, as the case may be. The initial aggregate amount of the Revolving Lenders' Revolving Commitments is $85,387,371.

"Revolving Exposure" means, with respect to any Revolving Lender at any time, the sum of the outstanding principal amount of such Lender's U.S. Revolving Exposure and Canadian Revolving Exposure at such time. The aggregate Revolving Exposure at any time shall be the aggregate amount of the Revolving Exposure of all Revolving Lenders at such time.

"Revolving Lender" means a Lender with a Revolving Commitment or, if the Revolving Commitments have terminated or expired, a Lender with Revolving Exposure.

"Revolving Loans" means, collectively, the U.S. Revolving Loans and the Canadian Revolving Loans.

"S&P" means Standard & Poor's Ratings Group, Inc.

"Sale Closing" means the consummation of a Company Sale.

"Schedule I Lender" means any Lender named on Schedule I to the Bank Act (Canada).

"Schedule I Reference Lenders" means any one or more of the Schedule I Lenders as may be agreed by the Canadian Subsidiary Borrower and the Administrative Agent from time to time.

"SEC" means the Securities and Exchange Commission or any successor thereto.

"Secured Obligations" means all Obligations, Swap Obligations in connection with the Prior Swap and Banking Services Obligations.

"Secured Parties" has the meaning assigned to such term in the Security Agreements.

"Security Agreements" means, collectively, the Domestic Security Agreement, the Canadian Security Agreement and the Canadian Trademark Security Agreement.

"Senior Secured Notes" means the 11.5% Second-Priority Senior Secured Notes due 2014 issued by the Parent Borrower under the Senior Secured Notes Indenture on February 2, 2006.

"Senior Secured Notes Documents" means the Senior Secured Notes Indenture, all side letters, instruments, agreements and other documents evidencing or governing the Senior Secured Notes, providing for any Guarantee or other right in respect thereof, affecting the terms of the foregoing or entered into in connection therewith and all schedules, exhibits and annexes to each of the foregoing.

"Senior Secured Notes Indenture" means the Indenture dated as of February 2, 2006, among the Parent Borrower, the Subsidiaries listed therein and the Senior Secured Notes Indenture Trustee.

"Senior Secured Notes Indenture Trustee" means U.S. Bank, National Association, as trustee under the Senior Secured Notes Indenture.

"Solvent" means, with respect to any Person on any date of determination, that on such date (a) the fair value of the property of such Person is greater than the total amount of liabilities, including contingent liabilities, of such Person, (b) the present fair salable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person's ability to pay such debts and liabilities as they mature, (d) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person's property would constitute an unreasonably small capital, and (e) such Person is able to pay its debts and liabilities, contingent obligations and other commitments as they mature in the ordinary course of business. The amount of contingent liabilities at any time shall be computed as the amount that, in the light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

"Sponsor" means Sun Capital Partners, Inc.

"Sponsor Affiliate" means any Affiliate of the Sponsor other than (a) Holdings, the Parent Borrower and the Subsidiaries and (b) any other operating company or a Person controlled by such an operating company.

"SPV" has the meaning assigned to such term in Section 9.04(e).

"Statutory Reserve Rate" means a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentages (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the Board to which the Administrative Agent is subject with respect to the Adjusted LIBO Rate, for eurocurrency funding (currently referred to as "Eurocurrency Liabilities" in Regulation D of the Board). Such reserve percentages shall include those imposed pursuant to such Regulation D. Eurodollar Loans shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under such Regulation D or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

"Stub Availability Block" means the sum of the Stub U.S. Availability Block and the Stub Canadian Availability Block.

"Stub U.S. Availability Block" means, on any day, the "U.S. Revolving Exposure" outstanding on such date under (and as defined in) the Prepetition Credit Agreement.

"Stub Canadian Availability Block" means, on any day, the "Canadian Revolving Exposure" outstanding on such date under (and as defined in) the Prepetition Credit Agreement.

"subsidiary" means, with respect to any Person (the "parent") at any date, any corporation, limited liability company, partnership, association or other entity the accounts of which would be consolidated with those of the parent in the parent's consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other corporation, limited liability company, partnership, association or other entity (a) of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, controlled or held, or (b) that is, as of such date, otherwise Controlled, by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent.

"Subsidiary" means any subsidiary of the Parent Borrower.

"Subsidiary Loan Parties" means, collectively, the Domestic Subsidiary Loan Parties and the Foreign Subsidiary Loan Parties.

"Superpriority Claim" means a claim against the Parent Borrower and any Loan Guarantor in any of the Bankruptcy Cases under Section 364(c)(1) of the Bankruptcy Code that is an administrative expense claim having priority over any and all administrative expenses of the kind specified in Sections 503 and 507(b) of the Bankruptcy Code.

"Swap Agreement" means any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions, provided that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of Holdings, the Parent Borrower or the Subsidiaries shall be a Swap Agreement.

"Swap Obligations" of a Person means any and all obligations of such Person, whether absolute or contingent and howsoever and whensoever created, arising, evidenced or acquired (including

all renewals, extensions and modifications thereof and substitutions therefor), under (a) any and all Swap Agreements and (b) any and all cancellations, buy backs, reversals, terminations or assignments of any Swap Agreement transaction.

"Taxes" means any and all present or future taxes, levies, imposts, duties, deductions, charges or withholdings imposed by any Governmental Authority.

"Termination Date" means the date that is earliest to occur of (i) the Maturity Date, (ii) the earlier of (x) the date a Chapter 11 Plan becomes effective in accordance with its terms and (y) the date a CCAA Plan becomes effective in accordance with its terms, (iii) the date that is 30 days after the entry of the Interim Order if the Final Order has not been entered prior to such date, (iv) the date of acceleration of the Loans and the termination of the Commitments in accordance with this Agreement and (v) a Sale Closing for a Company Sale.

"Term Lender" means a Lender with an outstanding Term Loan.

"Term Loans" mean Loans to the Parent Borrower from certain Lenders deemed made in accordance with Section 2.01(e).

"Total Borrowing Base" means, at any time, the aggregate of the Domestic Borrowing Base and the Canadian Borrowing Base at such time.

"Total L/C Exposure" means, at any time, the aggregate of the U.S. L/C Exposure and the U.S. Dollar Equivalent of the Canadian L/C Exposure at such time.

"Transactions" means, collectively, (a) the filing of the Bankruptcy Cases and the commencement of the Canadian Proceeding, (b) the execution and delivery of the Loan Documents, (c) the borrowing of Revolving Loans hereunder, (d) the payment of related fees and expenses and (e) the conversion and exchange of certain Prepetition Revolving Loans, Prepetition Swap Obligations, Prepetition Banking Services Obligations, Prepetition Letters of Credit and Cash Collateral Loans pursuant to the Loan Documents, the Orders and the Canadian Order into Obligations hereunder.

"Type", when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to the Adjusted LIBO Rate, the Alternate Base Rate, the U.S. Base Rate or the Canadian Base Rate.

"UCC" means the Uniform Commercial Code as in effect from time to time in the State of New York or any other state the laws of which are required to be applied in connection with the issue of perfection of security interests.

"Unliquidated Obligations" means, at any time, any Secured Obligations (or portion thereof) that are contingent in nature or unliquidated at such time, including any Secured Obligation that is (a) an obligation to reimburse a bank for drawings not yet made under a letter of credit issued by it, (b) any other obligation (including any guarantee or indemnity) that is contingent in nature at such time or (c) an obligation to provide collateral to secure any of the foregoing types of obligations.

"Up-front Fee" means $600,000, payable by the Parent Borrower to the Administrative Agent for the accounts of the respective Revolving Lenders ratably in accordance with their Revolving Commitments.

"U.S. Base Rate" means, for any day, the rate of interest per annum equal to the greatest of (a) the interest rate per annum publicly announced from time to time by the Administrative Agent as its reference rate in effect on such day at its principal office in Toronto for determining interest rates applicable to commercial loans denominated in U.S. Dollars in Canada, (b) the Federal Funds Effective Rate in effect on such day plus 0.50% and (c) the Adjusted LIBO Rate effect on such day plus 1.00%. Any change in the U.S. Base Rate due to a change in such reference rate, the Federal Funds Effective Rate or the Adjusted LIBO Rate shall be effective as of the opening of business on the effective day of such change in the reference rate, the Federal Funds Effective Rate or the Adjusted LIBO Rate, as applicable.

"U.S. Dollar Equivalent" means, on any date of determination, (a) with respect to any amount in U.S. Dollars, such amount, and (b) with respect to any amount in Canadian Dollars, the equivalent in U.S. Dollars of such amount, determined by the Administrative Agent pursuant to Section 1.05 using the Exchange Rate with respect to such currency at that time in effect under the provisions of such Section.

"U.S. Dollars" or "$" means lawful money of the United States of America.

"U.S. L/C Disbursement" means a payment made by the Issuing Bank pursuant to a Letter of Credit deemed issued, pursuant to Section 2.04(a), for the account of the Parent Borrower or for the account of any Domestic Subsidiary.

"U.S. L/C Exposure" means, at any time, the sum of (a) the aggregate undrawn amount of all outstanding Letters of Credit deemed issued, pursuant to Section 2.04(a), for the account of the Parent Borrower and the Domestic Subsidiaries at such time, plus (b) the aggregate amount of all U.S. L/C Disbursements that have not yet been reimbursed (including by the making of Loans hereunder) by or on behalf of the Parent Borrower and the Domestic Subsidiaries at such time. The U.S. L/C Exposure of any Lender at any time shall be its Applicable Percentage of the U.S. L/C Exposure at such time.

"U.S. Lending Office" means, as to any Lender, the applicable branch, office or Affiliate of such Lender designated by such Lender to make Loans to the Parent Borrower.

"U.S. Obligations" means (a) all unpaid principal of and accrued and unpaid interest on the Loans made to the Parent Borrower, (b) all U.S. L/C Exposure in respect of Letters of Credit deemed issued pursuant to Section 2.04(a) for the account of the Parent Borrower and the Domestic Subsidiaries and (c) all accrued and unpaid fees and all expenses, reimbursements, indemnities and other obligations of Holdings, the Parent Borrower and the Domestic Subsidiary Loan Parties owed to the Revolving Lenders or to any Revolving Lender, the Administrative Agent, the Issuing Bank or any Related Party of any of the foregoing arising under the Loan Documents (including the Guarantees provided by the Loan Guarantors pursuant to Article X in respect of such obligations).

"U.S. Receivables Account" has the meaning assigned to it in Section 3.06 of the Domestic Security Agreement.

"U.S. Revolving Exposure" means, at any time, the sum of (a) the outstanding principal amount of U.S. Revolving Loans at such time and (b) the U.S. L/C Exposure at such time. The U.S. Revolving Exposure of any Revolving Lender at any time shall be such Lender's Applicable Percentage of the U.S. Revolving Exposure at such time.

"U.S. Revolving Loan" means a Loan made by a Revolving Lender pursuant to Section 2.01(a) (including pursuant to the application of Sections 2.01(c) and 2.01(d)). Each U.S. Revolving Loan shall be an ABR Revolving Loan or a Eurodollar Revolving Loan.

"wholly-owned subsidiary" means, with respect to any Person at any date, a subsidiary of such Person of which securities or other ownership interests representing 100% of the Equity Interests (other than directors' qualifying shares) are, as of such date, owned, controlled or held by such Person or one or more wholly-owned Subsidiaries of such Person or by such Person and one or more wholly-owned Subsidiaries of such Person. For purposes of this Agreement, "wholly-owned Subsidiary" means a direct or indirect wholly-owned subsidiary of the Parent Borrower.

"Weekly Borrowing Base Certificate" means a certificate, signed and certified as accurate and complete by a Financial Officer or any other officer of the Parent Borrower reasonably acceptable to the Administrative Agent, in substantially the form of Exhibit C-2 or another form that is reasonably acceptable to the Administrative Agent in its sole discretion, which shall include appropriate exhibits, schedules, supporting documentation and additional reports (a) as outlined in Schedule 1 to Exhibit C-2 and (b) as reasonably requested by the Administrative Agent.

"Withdrawal Liability" means liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

"Withholding Agent" has the meaning assigned to such term in Section 2.16(a).

SECTION 1.02. Classification of Loans and Borrowings. For purposes of this Agreement, (a) Loans may be classified and referred to by Class (e.g., a "U.S. Revolving Loan") or by Type (e.g., a "Eurodollar Loan") or by Class and Type (e.g., a "Eurodollar U.S. Revolving Loan"), and Borrowings also may be classified and referred to by Class (e.g., a "U.S. Revolving Borrowing") or by Type (e.g., a "Eurodollar Borrowing") or by Class and Type (e.g., a "Eurodollar U.S. Revolving Borrowing") and (b) "Revolving Borrowings" means the U.S. Revolving Borrowings, the Canadian Revolving Borrowings or both, as the context may require.

SECTION 1.03. Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation". The word "will" shall be construed to have the same meaning and effect as the word "shall". Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, amended and restated, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person's successors and assigns, (c) the words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement, (e) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights and (f) any reference to any Requirement of Law shall, unless otherwise specified, refer to such Requirement of Law as amended, modified or supplemented from time to time.

SECTION 1.04. Accounting Terms; GAAP. Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time, consistently applied, provided that if the Parent Borrower notifies the Administrative Agent that the Parent Borrower requests an amendment to any provision hereof (including any defined term) to eliminate the effect of any change occurring after the date hereof in GAAP or in the application thereof on the operation of such provision (or if the Administrative Agent notifies the Parent Borrower that the Required Lenders request an amendment to any provision (including any definition) hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith. Upon any such request for an amendment, the Parent Borrower, the Required Lenders and the Administrative Agent agree to consider in good faith any such amendment in order to amend the provisions of this Agreement so as to reflect equitably such accounting changes so that the criteria for evaluating the Parent Borrower's financial condition shall be the same after such accounting changes as if such accounting changes had not occurred. In no event shall any capital stock be deemed to constitute Indebtedness or any payment of any dividend or distribution thereon be deemed to constitute interest solely as a result of the application of Financial Accounting Standards No. 150.

SECTION 1.05. Currency Translation. (a) Except as specifically provided in clause (b) of this Section 1.05, for purposes of determining compliance as of any date with the terms of any Loan Document (other than the limits and sublimits for Revolving Exposure set forth in Article II of this Agreement), amounts incurred or outstanding in Canadian Dollars shall be translated into U.S. Dollars at the exchange rates in effect on the first Business Day of the fiscal quarter in which such determination occurs or in respect of which such determination is being made, as such exchange rates shall be determined in good faith by the Parent Borrower. No Default shall arise as a result of any limitation or threshold set forth in U.S. Dollars in any Loan Document (other than the limits and sublimits for Revolving Exposure set forth in Article II of this Agreement) being exceeded solely as a result of changes in currency exchange rates from those rates applicable on the first day of the fiscal quarter in which such determination occurs or in respect of which such determination is being made.

(b) (i)The Administrative Agent shall determine the U.S. Dollar Equivalent of any Letter of Credit denominated in Canadian Dollars, as well as of each component of the Domestic Borrowing Base and the Canadian Borrowing Base, as of each date (with such date to be reasonably determined by the Administrative Agent) that is on or about the date of each request for the amendment, renewal or extension of such Letter of Credit, using the Exchange Rate for the applicable currency in relation to U.S. Dollars in effect on the date of determination, and each such amount shall be the U.S. Dollar Equivalent of such Letter of Credit (or such Domestic Borrowing Base component or Canadian Borrowing Base component, as the case may be) until the next required calculation thereof pursuant to this paragraph (b)(i) (or, in the case of such Domestic Borrowing Base component or Canadian Borrowing Base component, pursuant to paragraph (b)(ii) or (b)(v)) of this Section 1.05.

(ii) The Administrative Agent shall determine the U.S. Dollar Equivalent of any Borrowing denominated in Canadian Dollars as well as of each component of the Domestic Borrowing Base and the Canadian Borrowing Base, as of each date (with such date to be reasonably determined by the Administrative Agent) that is on or about the date of a Borrowing Request or Interest Election Request with respect to any such Borrowing, or as of each date of any termination or reduction of Commitments hereunder or the prepayment of Loans hereunder, in each case using the Exchange Rate for the applicable currency in relation to U.S. Dollars in effect on the date of determination, and each such amount shall be the U.S. Dollar Equivalent of such Borrowing (or such

Domestic Borrowing Base component or Canadian Borrowing Base component, as the case may be) until the next required calculation thereof pursuant to this paragraph (b)(ii) (or, in the case of such Domestic Borrowing Base component or Canadian Borrowing Base component, pursuant to paragraph (b)(i) or (b)(v)) of this Section 1.05.

(iii) The U.S. Dollar Equivalent of any Canadian L/C Disbursement made by the Issuing Bank in Canadian Dollars and not reimbursed by the Canadian Subsidiary Borrower shall be determined as set forth in paragraphs (e) or (k) of Section 2.04, as applicable. In addition, the U.S. Dollar Equivalent of the Canadian L/C Exposure shall be determined as set forth in paragraph (k) of Section 2.04, at the time and in the circumstances specified therein.

(iv) The Administrative Agent shall notify the Borrowers, the applicable Lenders and the Issuing Bank of each calculation of the U.S. Dollar Equivalent of each Letter of Credit, Borrowing and L/C Disbursement.

(v) In addition to the requirements set forth in paragraphs (b)(i) and (b)(ii) of this Section 1.05, the Administrative Agent shall determine the U.S. Dollar Equivalent of each applicable component of the Domestic Borrowing Base and the Canadian Borrowing Base as of each date (with such date to be reasonably determined by the Administrative Agent) that is on or about the date of delivery of each Borrowing Base Certificate hereunder, in each case using the Exchange Rate for the applicable currency in relation to U.S. Dollars in effect on the date of determination, and each such amount shall be the U.S. Dollar Equivalent of such Domestic Borrowing Base component or Canadian Borrowing Base component until the next required calculation thereof pursuant to paragraph (b)(i), (b)(ii) or (b)(v) of this Section 1.05.

## ARTICLE II

## The Credits

SECTION 2.01. Commitments. Subject to the terms and conditions set forth herein,

(a) each Revolving Lender agrees to make U.S. Revolving Loans to the Parent Borrower in U.S. Dollars, from time to time during the Availability Period, in an aggregate principal amount that will not result in (i) such Lender's Revolving Exposure exceeding such Lender's Revolving Commitment, (ii) the U.S. Revolving Exposure exceeding the Domestic Borrowing Base then in effect minus the Stub U.S. Availability Block, (iii) the aggregate Revolving Exposure exceeding the lesser of (A) the aggregate Revolving Commitments minus the Stub Availability Block and (B) an amount equal to (x) the Total Borrowing Base then in effect minus (y) the Availability Block or (iv) the aggregate Revolving Exposure exceeding the amount permitted by the Interim Order, the Canadian Order or the Final Order, as applicable;

(b) each Revolving Lender agrees to make Canadian Revolving Loans to the Canadian Subsidiary Borrower in Canadian Dollars and/or U.S. Dollars from time to time during the Availability Period, in an aggregate principal amount that will not result in (i) such Lender's Canadian Revolving Exposure exceeding such Lender's Canadian Revolving Sub-Commitment, (ii) such Lender's Revolving Exposure exceeding such Lender's Revolving Commitment, (iii) the Canadian Revolving Exposure exceeding the lesser of (A) the aggregate Canadian Revolving Sub-Commitments minus the Stub Canadian Availability Block, and (B) the Canadian Borrowing Base then in effect minus the Stub Canadian Availability Block, (iv) the aggregate Revolving

Exposure exceeding the lesser of (A) the aggregate Revolving Commitments minus the Stub Availability Block and (B) an amount equal to (x) the Total Borrowing Base then in effect minus (y) the Availability Block or (v) the aggregate Revolving Exposure exceeding the amount permitted by the Interim Order, the Canadian Order or the Final Order, as applicable;

(c) Subject to, and in accordance with the terms of, the Final Order, as of the Final Order Date, each U.S. Revolving Loan under (and as defined in) the Prepetition Credit Agreement outstanding as of such date made by a Lender to the Parent Borrower shall be deemed to have been converted into a U.S. Revolving Loan made by such Lender to the Parent Borrower pursuant to Section 2.01(a) hereunder. Each Revolving Loan deemed made pursuant to this Section 2.01(c) shall initially be of the same Type as it was under the Prepetition Credit Agreement on the Final Order Date prior to the application of this Section 2.01(c);

(d) Subject to, and in accordance with the terms of, the Interim Order, as of the Effective Date, each Cash Collateral Loan (plus accrued and unpaid interest thereon) made by a Lender to the Parent Borrower under the Interim Cash Collateral Order shall be deemed converted into a U.S. Revolving Loan made by such Lender to the Parent Borrower. Each Revolving Loan deemed made pursuant to this Section 2.01(d) shall initially be an ABR Loan; and

(e) Subject to, and in accordance with the terms of, the Final Order, as of the Final Order Date, the amount of each "Swap Obligation" arising out of a "Swap Agreement" terminated in accordance with its terms (which shall not include the Prior Swap) and the amount of each "Banking Services Obligation", in each case under (and each such term as defined in) the Prepetition Credit Agreement owed to any Lender or Affiliate of any Lender hereunder and outstanding as of the Petition Date shall be deemed to have been converted into a Term Loan made by the relevant Lender to the Parent Borrower in a principal amount in U.S. dollars equal to the aggregate amount owing to such Lender or its Affiliate under such Swap Obligation or Banking Services Obligation as of the Final Order Date. Each Term Loan deemed made pursuant to this Section 2.01(e) shall initially be an ABR Loan.

Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrowers may borrow, prepay and reborrow Revolving Loans. Amounts repaid or prepaid in respect of Term Loans may not be reborrowed.

SECTION 2.02. Loans and Borrowings. (a) Each Loan shall be made as part of a Borrowing consisting of Loans of the same Class and Type made by the Lenders, subject to Sections 2.01(c), 2.01(d) and 2.01(e), (i) in the case of U.S. Revolving Borrowings, ratably in accordance with their respective Revolving Commitments as of the date of borrowing and (ii) in the case of Canadian Revolving Borrowings, ratably in accordance with their respective Canadian Revolving Sub-Commitments as of the date of borrowing. Any failure of any Lender to make any Loan required to be made by it shall not relieve any other Lender of its obligations hereunder, provided that each of the Revolving Commitments and Canadian Revolving Sub-Commitments of the Lenders are several and no Lender shall be responsible for any other Lender's failure to make Loans as required.

(b) Subject to Sections 2.01(c), 2.01(d), 2.01(e) and 2.13, (i) each U.S. Revolving Borrowing shall be comprised entirely of ABR Revolving Loans or Eurodollar Revolving Loans as the Parent Borrower may request in accordance herewith, (ii) each Term Loan shall be comprised entirely of ABR Term Loans or Eurodollar Term Loans as the Parent Borrower may request in accordance herewith and (iii) each Canadian Revolving Borrowing (A) denominated in U.S. Dollars shall be comprised entirely of U.S. Base Rate Revolving Loans or Eurodollar Revolving Loans, as the Canadian Subsidiary Borrower may request in accordance herewith, and (B) denominated in Canadian Dollars shall be

comprised entirely of Canadian Base Rate Revolving Loans. Subject to Section 2.18, each Lender at its option may make any Eurodollar Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan, provided that any exercise of such option shall not affect the obligation of the applicable Borrower to repay such Loan in accordance with the terms of this Agreement.

(c) Subject to Section 2.01(c), at the commencement of each Interest Period for any Eurodollar Borrowing, such Borrowing shall be in an aggregate amount that is an integral multiple of $1,000,000 and not less than $5,000,000. Borrowings of more than one Class and Type may be outstanding at the same time, provided that there shall not at any time be more than a total of eight Eurodollar Borrowings outstanding.

(d) Notwithstanding any other provision of this Agreement, the applicable Borrower shall not be entitled to request, or to elect to convert or continue, any Borrowing if the Interest Period requested with respect thereto would end after the Maturity Date.

SECTION 2.03. Requests for Borrowings. To request a Borrowing, the applicable Borrower shall notify the Administrative Agent of such request either in writing (delivered by hand or facsimile) in a form approved by the Administrative Agent and signed by the applicable Borrower or by telephone (a) in the case of a Eurodollar Borrowing, not later than 12:00 noon, Local Time, three Business Days before the date of the proposed Borrowing, (b) in the case of an ABR Borrowing, not later than 11:00 a.m., New York City time, on the date of the proposed Borrowing, (c) in the case of a Canadian Base Rate Revolving Borrowing, not later than 11:00 a.m., Toronto time, on the date of the proposed borrowing and (d) in the case of a U.S. Base Rate Revolving Borrowing, not later than 12:00 noon, Toronto time, one Business Day before the date of the proposed Borrowing. Each such Borrowing Request shall be irrevocable and, if telephonic, shall be confirmed promptly by hand delivery or facsimile to the Administrative Agent of a written Borrowing Request in a form approved by the Administrative Agent and signed by the applicable Borrower. Each such written and telephonic Borrowing Request shall specify the following information:

(i) the Borrower requesting such Borrowing;

(ii) whether such Borrowing is to be a U.S. Revolving Borrowing or a Canadian Revolving Borrowing;

(iii) the currency and aggregate amount of such Borrowing;

(iv) the date of such Borrowing, which shall be a Business Day;

(v) whether such Borrowing is to be an ABR Borrowing, U.S. Base Rate Revolving Borrowing, Canadian Base Rate Revolving Borrowing or Eurodollar Borrowing;

(vi) in the case of a Eurodollar Borrowing, the initial Interest Period to be applicable thereto, which shall be a period contemplated by the definition of the term "Interest Period";

(vii) the location and number of the applicable Borrower's account to which funds are to be disbursed, which shall comply with the requirements of Section 2.06; and

(viii) that as of such date Section 4.02(a) is satisfied.

If no election as to the Type of Borrowing is specified, then the requested Borrowing shall be (A) in the

case of a U.S. Revolving Borrowing, an ABR Revolving Borrowing, and (B) in the case of a Canadian Revolving Borrowing, a Canadian Base Rate Revolving Borrowing. If no Interest Period is specified with respect to any requested Eurodollar Borrowing, then the applicable Borrower shall be deemed to have selected an Interest Period of one month's duration. Promptly following receipt of a Borrowing Request in accordance with this Section 2.03, the Administrative Agent shall advise each Lender of the details thereof and the amount of such Lender's Loan to be made as part of the requested Borrowing. If no currency is specified with respect to any Canadian Revolving Borrowing, then the currency of such Canadian Revolving Borrowing shall be Canadian Dollars (unless the applicable Borrowing Request otherwise specified that such Borrowing shall be a U.S. Base Rate Canadian Revolving Borrowing or a Eurodollar Canadian Revolving Borrowing, in which case the currency of such Canadian Revolving Borrowing shall be U.S. Dollars). Solely with respect to the application of Sections 2.01(c) and 2.01(e) on the Final Order Date and Section 2.01(d) on the Effective Date, the provisions of this Section 2.04 shall not apply.

SECTION 2.04. Letters of Credit. (a) General. Subject to and in accordance with the terms and conditions of the Final Order, as of the Final Order Date, each Prepetition Letter of Credit will, automatically and without any action on the part of any Person, be deemed to be a Letter of Credit issued hereunder for all purposes of this Agreement and the other Loan Documents and the provisions of the Prepetition Credit Agreement shall no longer apply thereto. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any form of letter of credit application or other agreement submitted by the applicable Borrower or Subsidiary to, or entered into by the applicable Borrower or Subsidiary with, the Issuing Bank relating to any Letter of Credit, the terms and conditions of this Agreement shall control. No Letters of Credit may be issued hereunder other than as provided in this Section 2.04(a).

(b) Notice of Amendment, Renewal, Extension; Certain Conditions. To request the amendment, renewal or extension of an outstanding Letter of Credit, the applicable Borrower (and, as applicable, Subsidiary) shall hand deliver or facsimile (or transmit by electronic communication, if arrangements for doing so have been approved by the Issuing Bank) to the Issuing Bank and the Administrative Agent (reasonably in advance of the requested date of amendment, renewal or extension) a notice (i) identifying the Letter of Credit to be amended, renewed or extended, (ii) specifying the date of such amendment, renewal or extension (which shall be a Business Day), (iii) the date on which such Letter of Credit is to expire (which shall comply with paragraph (c) of this Section 2.04), (iv) the amount of such Letter of Credit, (v) the name and address of the beneficiary thereof and (vi) such other information as shall be necessary to amend, renew or extend such Letter of Credit. A Letter of Credit shall be amended, renewed or extended only if (and, upon amendment, renewal or extension of each Letter of Credit, the applicable Borrower (and, as applicable, Subsidiary) shall be deemed to represent and warrant that), after giving effect to such amendment, renewal or extension (A) the Total L/C Exposure shall not be increased, (B) the aggregate Revolving Exposure shall not exceed the amount permitted under the Interim Order, the Final Order or the Canadian Order, as applicable and (C) such Letter of Credit, as amended, renewed or extended, would not expire after the close of business on the date that is five Business Days prior to the Maturity Date (unless any such amendment did not change the expiration date of such letter of credit).

(c) Participations. Each Revolving Lender hereby acquires from the Issuing Bank a participation in each Letter of Credit equal to such Lender's Applicable Percentage of the aggregate amount available to be drawn under such Letter of Credit. In consideration and in furtherance of the foregoing, (i) each Revolving Lender hereby absolutely and unconditionally agrees to pay to the Administrative Agent, for the account of the Issuing Bank, such Lender's Applicable Percentage of each U.S. L/C Disbursement made by the Issuing Bank and not reimbursed by the Parent Borrower or applicable Domestic Subsidiary on the date due as provided in paragraph (e) of this Section 2.04 or of any

reimbursement payment required to be refunded to the Parent Borrower or applicable Domestic Subsidiary for any reason and (ii) each Revolving Lender hereby absolutely and unconditionally agrees to pay to the Administrative Agent, for the account of the Issuing Bank, such Lender's Applicable Percentage of each Canadian L/C Disbursement made by the Issuing Bank and not reimbursed by the Canadian Subsidiary Borrower or applicable Foreign Subsidiary on the date due as provided in paragraph (e) of this Section 2.04 or of any reimbursement payment required to be refunded to the Canadian Subsidiary Borrower or applicable Foreign Subsidiary for any reason. Each Revolving Lender acknowledges and agrees that its obligation to acquire participations pursuant to this paragraph in respect of Letters of Credit is absolute and unconditional and shall not be affected by any circumstance whatsoever, including any amendment, renewal or extension of any Letter of Credit or the occurrence and continuance of a Default or reduction or termination of the Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever.

(d) Reimbursement. If the Issuing Bank shall make any L/C Disbursement in respect of a Letter of Credit, the applicable Borrower or Subsidiary shall reimburse such L/C Disbursement by paying to the Administrative Agent an amount equal to such L/C Disbursement not later than 3:00 p.m., Local Time, on the date that such L/C Disbursement is made, if the applicable Borrower or Subsidiary shall have received notice of such L/C Disbursement prior to 10:00 a.m., Local Time, on such date, or, if such notice has not been received by the applicable Borrower or Subsidiary prior to such time on such date, then not later than (i) 3:00 p.m., Local Time, on the Business Day that the applicable Borrower or Subsidiary receives such notice, if such notice is received prior to 10:00 a.m., Local Time, on the day of receipt, or (ii) 12:00 noon, Local Time, on the Business Day immediately following the day that the applicable Borrower or Subsidiary receives such notice, if such notice is not received prior to 10:00 a.m., Local Time, on the day of receipt, provided that the applicable Borrower or Subsidiary may, subject to the conditions to borrowing set forth herein, request in accordance with Section 2.03 that such payment be financed with (A) in the case of a Letter of Credit deemed issued pursuant to Section 2.04(a) for the account of the Parent Borrower or any Domestic Subsidiary, an ABR Revolving Borrowing made to the Parent Borrower, or (B) in the case of a Letter of Credit deemed issued pursuant to Section 2.04(a) for the account of the Canadian Subsidiary Borrower or any Foreign Subsidiary, a Canadian Base Rate Revolving Loan made to the Canadian Subsidiary Borrower and denominated in Canadian Dollars, in each case, in an equivalent amount and, to the extent so financed, the obligation of the applicable Borrower or Subsidiary to make such payment shall be discharged and replaced by the resulting ABR Revolving Borrowing or Canadian Base Rate Revolving Borrowing, as the case may be. If the applicable Borrower or Subsidiary fails to make such payment when due, the Administrative Agent shall notify each Revolving Lender of the applicable L/C Disbursement, the payment then due from the applicable Borrower or Subsidiary in respect thereof and such Lender's Applicable Percentage thereof. Promptly following receipt of such notice, each Revolving Lender shall pay to the Administrative Agent its Applicable Percentage of the payment then due from the applicable Borrower or Subsidiary, in the same manner as provided in Section 2.06 with respect to Loans made by such Lender (and Section 2.06 shall apply (other than with respect to any time limits set forth therein), mutatis mutandis, to the payment obligations of the Revolving Lenders), and the Administrative Agent shall promptly pay to the Issuing Bank the amounts so received by it from the Revolving Lenders. Promptly following receipt by the Administrative Agent of any payment from the applicable Borrower or Subsidiary pursuant to this paragraph, the Administrative Agent shall distribute such payment to the Issuing Bank or, to the extent that Revolving Lenders have made payments pursuant to this paragraph to reimburse the Issuing Bank, then to such Lenders and the Issuing Bank as their interests may appear. Any payment made by a Revolving Lender pursuant to this paragraph to reimburse the Issuing Bank for any L/C Disbursement (other than the funding of ABR Revolving Loans or Canadian Base Rate Revolving Loans as contemplated above) shall not constitute a Loan and shall not relieve the applicable Borrower or Subsidiary of its obligation to reimburse such L/C Disbursement.

(e) Obligations Absolute. The applicable Borrower or Subsidiary's obligation to reimburse L/C Disbursements as provided in paragraph (e) of this Section 2.04 shall be absolute, unconditional and irrevocable and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of (i) any lack of validity or enforceability of any Letter of Credit or this Agreement or any term or provision therein or herein, (ii) any draft or other document presented under a Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect, (iii) payment by the Issuing Bank under a Letter of Credit against presentation of a draft or other document that does not comply with the terms of such Letter of Credit or (iv) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section 2.04, constitute a legal or equitable discharge of, or provide a right of setoff against, the obligations of the applicable Borrower or Subsidiary hereunder. Neither the Administrative Agent, the Lenders nor the Issuing Bank, nor any of their Related Parties, shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence) or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any reasonable error in interpretation of technical terms or any consequence arising from causes beyond the control of the Issuing Bank, provided that the foregoing shall not be construed to excuse the Issuing Bank from liability to the applicable Borrower or Subsidiary to the extent of any direct damages (as opposed to consequential damages, claims in respect of which are hereby waived by such Borrower or Subsidiary to the extent permitted by applicable law) suffered by such Borrower or Subsidiary that are caused by the Issuing Bank's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence or wilful misconduct on the part of the Issuing Bank (as finally determined by a court of competent jurisdiction), the Issuing Bank shall be deemed to have exercised care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented that appear on their face to be in substantial compliance with the terms of a Letter of Credit, the Issuing Bank may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit, and any such acceptance or refusal shall be deemed not to constitute gross negligence or wilful misconduct.

(f) Disbursement Procedures. The Issuing Bank shall, promptly following its receipt thereof, examine all documents purporting to represent a demand for payment under a Letter of Credit. The Issuing Bank shall promptly notify the Administrative Agent and the applicable Borrower or Subsidiary by telephone (confirmed by facsimile) of such demand for payment and whether the Issuing Bank has made or will make an L/C Disbursement thereunder, provided that any failure to give or delay in giving such notice shall not relieve such Borrower or Subsidiary of its obligation to reimburse the Issuing Bank and the Revolving Lenders with respect to any such L/C Disbursement in accordance with Section 2.04(e).

(g) Interim Interest. If the Issuing Bank shall make any L/C Disbursement, then, unless the applicable Borrower or Subsidiary shall reimburse such L/C Disbursement in full on the date such L/C Disbursement is made, the unpaid amount thereof shall bear interest, for each day from and including the date such L/C Disbursement is made to but excluding the date that such Borrower or Subsidiary reimburses such L/C Disbursement, at the rate per annum then applicable to (i) ABR Revolving Loans, in the case of Letters of Credit deemed issued pursuant to Section 2.04(a) for the account of the Parent Borrower or any Domestic Subsidiary, or (ii) Canadian Base Rate Revolving Loans, in the case of Letters of Credit deemed issued pursuant to Section 2.04(a) for the account of the Canadian Subsidiary Borrower

or any Foreign Subsidiary, provided that, if the applicable Borrower or Subsidiary fails to reimburse such L/C Disbursement when due pursuant to paragraph (e) of this Section 2.04, then Section 2.12(c) shall apply. Interest accrued pursuant to this paragraph shall be for the account of the Issuing Bank, except that interest accrued on and after the date of payment by any Revolving Lender pursuant to paragraph (e) of this Section 2.04 to reimburse the Issuing Bank shall be for the account of such Lender to the extent of such payment.

(h) Cash Collateralization. Upon the occurrence of the Termination Date, or, if any Event of Default shall occur and be continuing, on the Business Day that the Parent Borrower receives notice from the Administrative Agent or the Required Lenders (or, if the maturity of the Revolving Loans has been accelerated, the Revolving Lenders with a Total L/C Exposure representing greater than 50% of the Total L/C Exposure) demanding the deposit of cash collateral pursuant to this paragraph, then in either such case the Parent Borrower and the Canadian Subsidiary Borrower shall deposit in an account with the applicable Administrative Agent, in the name of the Administrative Agent and for the benefit of the Revolving Lenders (each, an "L/C Collateral Account"), an amount in cash equal to 105% of the U.S. L/C Exposure and the Canadian L/C Exposure, respectively, as of such date plus accrued and unpaid interest thereon (or, at the request of the Issuing Bank, in lieu of such cash collateral, with respect to any such Letter of Credit, deliver to the Issuing Bank a backstop letter of credit in favor of the Issuing Bank, from a bank satisfactory to the Issuing Bank and in form and substance satisfactory to the Issuing Bank, in an amount equal to 105% of the face amount of such Letter of Credit). Such deposit shall be held by the Administrative Agent as collateral for the payment and performance of the Secured Obligations. The Administrative Agent shall have exclusive dominion and control, including the exclusive right of withdrawal, over such accounts and the Borrowers hereby grant the Administrative Agent a security interest in the L/C Collateral Account as set forth in Section 2.20. Other than any interest earned on the investment of such deposits, which investments shall be made at the option and sole discretion of the Administrative Agent and at the Borrowers' risk and expense, such deposits shall not bear interest. Interest or profits, if any, on such investments shall accumulate in such accounts. Moneys in such accounts shall be applied by the Administrative Agent to reimburse the Issuing Bank for L/C Disbursements for which it has not been reimbursed and, to the extent not so applied, such moneys shall be held for the satisfaction of the reimbursement obligations of the Borrowers for the Total L/C Exposure at such time or, if the maturity of the Loans has been accelerated (but subject to the consent of the Issuing Bank and Revolving Lenders with a Total L/C Exposure representing greater than 50% of the Total L/C Exposure), such moneys shall be applied to satisfy other Secured Obligations. If any Borrower is required to provide an amount of cash collateral hereunder as a result of the occurrence of an Event of Default, such amount (to the extent not applied as aforesaid) shall be returned to the applicable Borrower within three Business Days after all such Events of Defaults have been cured or waived, if at such time the Termination Date has not occurred.

SECTION 2.05. [Reserved.]

SECTION 2.06. Funding of Borrowings. (a) Each Lender shall make each Loan to be made by it on the proposed date thereof by wire transfer of immediately available funds by 1:00 p.m., Local Time, to the account of the Administrative Agent most recently designated by it for such purpose by notice to the Lenders. The Administrative Agent will make such Loans available to the applicable Borrower by promptly crediting the amounts so received, in like funds, to such Borrower's Funding Account, provided that ABR Revolving Loans, U.S. Base Rate Revolving Loans and Canadian Base Rate Revolving Loans made to finance the reimbursement of an L/C Disbursement and reimbursements as provided in Section 2.04(e) shall be remitted by the Administrative Agent to the Issuing Bank or, to the extent that the Revolving Lenders have made payments to the Issuing Bank pursuant to Section 2.04(e) to reimburse the Issuing Bank, then to such Lenders and the Issuing Bank as their interests may appear.

(b) Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with paragraph (a) of this Section 2.06 and may, in reliance upon such assumption, make available to the applicable Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of such Borrowing available to the Administrative Agent, then the applicable Lender and the applicable Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the applicable Borrower to but excluding the date of payment to the Administrative Agent, at (i) in the case of such Lender, the greater of (A)(1) if such amount corresponds to a Borrowing made by the Parent Borrower, the Federal Funds Effective Rate, or (2) if such amount corresponds to a Borrowing made by the Canadian Subsidiary Borrower, the rate reasonably determined by the Administrative Agent to be the cost to it of funding such amount, and (B) a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation, (ii) in the case of the Parent Borrower, the interest rate applicable to ABR Revolving Loans or (iii) in the case of the Canadian Subsidiary Borrower, (A) if such amount corresponds to a Borrowing made in U.S. Dollars, the interest rate applicable to U.S. Base Rate Revolving Loans, and (B) if such amount corresponds to a Borrowing made in Canadian Dollars, the interest rate applicable to Canadian Base Rate Revolving Loans. If such Lender pays such amount to the Administrative Agent, then such amount shall constitute such Lender's Loan included in such Borrowing.

SECTION 2.07. Interest Elections. (a) Subject to Sections 2.01(c), 2.01(d) and 2.01(e), each Borrowing initially shall be of the Type specified in the applicable Borrowing Request and, in the case of a Eurodollar Borrowing, shall have an initial Interest Period as specified in such Borrowing Request. Thereafter, the Borrower may elect to convert such Borrowing to a different Type or to continue such Borrowing and, in the case of a Eurodollar Borrowing, may elect Interest Periods therefor, all as provided in this Section 2.07. The applicable Borrower may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated ratably among the Lenders holding the Loans comprising such Borrowing and the Loans resulting from an election made with respect to any such portion shall be considered a separate Borrowing.

(b) To make an election pursuant to this Section 2.07, the applicable Borrower shall notify the Administrative Agent of such election by telephone by the time that a Borrowing Request would be required under Section 2.03 if such Borrower were requesting a Borrowing of the Type resulting from such election to be made on the effective date of such election. Each such telephonic Interest Election Request shall be irrevocable and shall be confirmed promptly by hand delivery or facsimile to the Administrative Agent of a written Interest Election Request in a form approved by the Administrative Agent and signed by the applicable Borrower. Notwithstanding any other provision of this Section 2.07, no Borrower shall be permitted to (i) change the currency of any Borrowing, (ii) elect an Interest Period for Eurodollar Loans that does not comply with Section 2.02(d) or (iii) convert any Borrowing to a Borrowing not available under the Class of Commitments pursuant to which such Borrowing was made. Each such written and telephonic Interest Election Request shall specify the following information:

(i) the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clauses (iii) and (iv) below shall be specified for each resulting Borrowing);

(ii) the effective date of the election made pursuant to such Interest Election Request, which shall be a Business Day;

(iii) whether the resulting outstanding credit extension is to be an ABR Borrowing, U.S. Base Rate Revolving Borrowing, Canadian Base Rate Revolving Borrowing or Eurodollar Borrowing; and

(iv) if the resulting Borrowing is a Eurodollar Borrowing, the Interest Period to be applicable thereto after giving effect to such election, which shall be a period contemplated by the definition of the term "Interest Period".

If any such Interest Election Request requests a Eurodollar Borrowing but does not specify an Interest Period, then the applicable Borrower shall be deemed to have selected an Interest Period of one month's or 30 days' duration. Promptly following receipt of an Interest Election Request, the Administrative Agent shall advise each Lender of the details thereof and of such Lender's portion of each resulting Borrowing.

(c) If a Borrower fails to deliver a timely Interest Election Request with respect to a Eurodollar Borrowing prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing shall (i) in the case of a Eurodollar U.S. Revolving or Term Borrowing, be converted to an ABR Borrowing and (ii) in the case of a Eurodollar Canadian Revolving Borrowing, be converted to a U.S. Base Rate Revolving Borrowing. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing and the Administrative Agent, at the request of the Required Lenders, so notifies the Parent Borrower, then, so long as an Event of Default is continuing, (i) no outstanding Borrowing may be converted to or continued as a Eurodollar Borrowing, and (ii) unless repaid, each Eurodollar Borrowing shall (A) in the case of a Eurodollar U.S. Revolving or Term Borrowing, be converted to an ABR Borrowing at the end of the Interest Period applicable thereto, and (B) in the case of a Eurodollar Canadian Revolving Borrowing, be converted to a U.S. Base Rate Revolving Borrowing at the end of the Interest Period applicable thereto.

SECTION 2.08. Termination and Reduction of Commitments. (a) The Commitments shall automatically terminate on the Termination Date.

(b) The Borrowers may at any time terminate, or from time to time reduce, the Commitments of any Class, provided that (i) each partial reduction of the Commitments of any Class shall be in an amount that is an integral multiple of $1,000,000, (ii) the Borrowers shall not terminate or reduce the Revolving Commitments if, after giving effect to any concurrent prepayment of the Revolving Loans in accordance with Section 2.10, the aggregate Revolving Exposure would exceed the lesser of (A) the aggregate Revolving Commitments minus the Stub Availability Block and (B) an amount equal to (x) the Total Borrowing Base then in effect minus (y) the Availability Block, (iii) the Borrowers shall not terminate or reduce the Revolving Commitments if, after giving effect to any concurrent prepayment of the U.S. Revolving Loans in accordance with Section 2.10, the U.S. Revolving Exposure would exceed an amount equal to the Domestic Borrowing Base then in effect minus the Stub U.S. Availability Block and (iv) the Borrowers shall not terminate or reduce the Canadian Revolving Sub-Commitments if, after giving effect to any concurrent prepayment of the Canadian Revolving Loans in accordance with Section 2.10, the Canadian Revolving Exposure would exceed the lesser of (A) the aggregate Canadian Revolving Sub-Commitments minus the Stub Canadian Availability Block and (B) an amount equal to the Canadian Borrowing Base then in effect minus the Stub Canadian Availability Block.

(c) The applicable Borrower shall notify the Administrative Agent of any election to terminate or reduce the Revolving Commitments or Canadian Revolving Sub-Commitments under paragraph (b) of this Section 2.08 at least three Business Days prior to the effective date of such termination or reduction, specifying such election and the effective date thereof. Promptly following

receipt of any notice, the Administrative Agent shall advise the Lenders of the contents thereof. Each notice delivered by a Borrower pursuant to this Section 2.08 shall be irrevocable, provided that a notice of termination of the Revolving Commitments or the Canadian Revolving Sub-Commitments delivered by a Borrower may state that such notice is conditioned upon consummation of an acquisition or sale transaction, the effectiveness of other credit facilities, the receipt of proceeds from the issuance of other Indebtedness, the effectiveness of a Chapter 11 Plan or the effectiveness of any CCAA Plan, in which case such notice may be revoked by such Borrower (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied. Any termination or reduction of the Commitments of any Class shall be permanent. Each reduction of the Commitments of any Class shall be made ratably among the Lenders in accordance with their respective Commitments of such Class.

(d) The Parent Borrower shall pay to the Administrative Agent for the account of the Lenders, on the date of each termination or reduction, the Commitment Fees on the amount of the Commitments so terminated or reduced accrued to but excluding the date of such termination or reduction.

SECTION 2.09. Repayment of Loans; Evidence of Debt. (a) Each Borrower hereby unconditionally promises to pay on the Termination Date to the Administrative Agent for the account of each Revolving Lender the then unpaid principal amount of each Revolving Loan of such Lender made to such Borrower. The Parent Borrower hereby unconditionally promises to pay on the Termination Date to the Administrative Agent for the account of each Term Lender, the then unpaid principal amount of each Term Loan of such Term Lender made to the Parent Borrower.

(b) On each Business Day prior to the Final Order Date, at or before 12:00 noon, Local Time, the Administrative Agent shall apply all immediately available funds held by it pursuant to Section 3.06 of the Domestic Security Agreement to (i) first, in accordance with the terms of the Interim Order, prepay Prepetition Revolving Loans made to the Parent Borrower, (ii) second, prepay the Loans made to the Parent Borrower hereunder, (iii) third, cash collateralize outstanding Total L/C Exposure hereunder in the manner provided in Section 2.04(h) and (iv) pay other obligations of the Parent Borrower hereunder, provided that (x) such prepayments shall be applied in a manner that minimizes payments due pursuant to Section 2.15, (y) the Administrative Agent shall apply prepayments of the Loans pursuant to Section 2.09(b)(ii) in accordance with the Priority Rules and (z) the order of prepayments under this Section 2.09(b) may be modified by the unanimous written agreement of the Revolving Lenders and no consent of any of the Loan Parties shall be required for any such modification (notwithstanding any other provision of this Agreement).

(c) On each Business Day on or following the Final Order Date, at or before 12:00 noon, Local Time, the Administrative Agent shall apply all immediately available funds held by it pursuant to Section 3.06 of the Domestic Security Agreement to (i) first, prepay the Loans made to the Parent Borrower hereunder, (ii) second, to cash collateralize outstanding Total L/C Exposure hereunder in the manner provided in Section 2.04(h) and (iii) to pay other obligations of the Parent Borrower hereunder, provided that (x) such prepayments shall be applied in a manner that minimizes payments due pursuant to Section 2.15, (y) the Administrative Agent shall apply prepayments of the Loans pursuant to Section 2.09(c)(i) in accordance with the Priority Rules and (z) the order of prepayments under this Section 2.09(c) may be modified by the unanimous written agreement of the Revolving Lenders and no consent of any of the Loan Parties shall be required for any such modification (notwithstanding any other provision of this Agreement), which modified order may include the prepayment of outstanding Prepetition Revolving Loans.

(d) On each Business Day, at or before 12:00 noon, Local Time, the Administrative Agent shall apply all immediately available funds held by it pursuant to Section 3.06 of the Canadian

Security Agreement to (i) first, prepay Prepetition Canadian Revolving Loans in accordance with the terms of the Canadian Order, (ii) second, prepay the Loans made to the Canadian Subsidiary Borrower hereunder and (iii) third, pay other obligations of the Canadian Subsidiary Borrower hereunder, provided that (x) such prepayments shall be applied in a manner that minimizes payments due pursuant to Section 2.15 and (y) the order of prepayments under clauses (i), (ii) and (iii) of this Section 2.09(d) may be re-ordered by the unanimous written agreement of the Revolving Lenders and no consent of any of the Loan Parties shall be required for any such modification (notwithstanding any other provision of this Agreement).

(e) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the Indebtedness of each Borrower to such Lender resulting from each Loan made by such Lender.

(f) The Administrative Agent shall maintain accounts in which it shall record (i) the amount of each Loan made hereunder, the currency thereof, the Class and Type thereof and the Interest Period (if any) applicable thereto, (ii) the amount of any principal, interest due or other amount due and payable or to become due and payable from each Borrower to each Lender hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof.

(g) The entries made in the accounts maintained pursuant to paragraph (e) or (f) of this Section 2.09 shall be, absent manifest error, prima facie evidence of the existence and amounts of the obligations recorded therein, provided that the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligation of any Borrower to repay the Loans in accordance with the terms of this Agreement.

(h) Any Lender may request that Loans of any Class made by it be evidenced by a promissory note. In such event, the applicable Borrower shall prepare, execute and deliver to such Lender a promissory note payable to the order of such Lender (or, if requested by such Lender, to such Lender and its registered assigns) and in a form approved by the Administrative Agent unless the applicable Borrower shall have already delivered a note representing such Loans, in which case the applicable Borrower shall have the right to have such note returned to it prior to delivering a new note. Thereafter, the Loans evidenced by such promissory note and interest thereon shall at all times (including after assignment pursuant to Section 9.04) be represented by one or more promissory notes in such form payable to the order of the payee named therein (or, if such promissory note is a registered note, to such payee and its registered assigns).

SECTION 2.10. Prepayments. (a) Each Borrower shall have the right at any time and from time to time to prepay Borrowings, in whole or in part, without premium or penalty (but subject to Section 2.15), subject to the requirements of this Section 2.10.

(b) In the event and on such occasion that (i) the aggregate Revolving Exposure exceeds the lesser of (A) the aggregate Revolving Commitments minus the Stub Availability Block and (B) an amount equal to (x) the Total Borrowing Base then in effect minus (y) the Availability Block, (ii) the U.S. Revolving Exposure exceeds the Domestic Borrowing Base then in effect minus the Stub U.S. Availability Block, (iii) the Canadian Revolving Exposure exceeds the lesser of (A) the aggregate Canadian Revolving Sub-Commitments minus the Stub Canadian Availability Block or (B) the Canadian Borrowing Base then in effect minus the Stub Canadian Availability Block or (iv) the aggregate Revolving Exposure, U.S. Revolving Exposure or Canadian Revolving Exposure exceeds, in any case, the amount permitted by the Interim Order, the Canadian Order or Final Order, as applicable, the applicable Borrower shall prepay the applicable Revolving Borrowings (or, if no such Borrowings are

outstanding, deposit cash collateral in the applicable L/C Collateral Account or provide for backstop letters of credit, in each case pursuant to Section 2.04(h)) in an aggregate amount equal to such excess within one Business Day after the day of such event or occasion.

(c) Subject to Section 2.09(b) and 2.09(c), any optional or mandatory prepayments by the Parent Borrower shall be allocated between Revolving Loans and Term Loans in accordance with the Priority Rules. Subject to the foregoing, prior to any optional or mandatory prepayment of Borrowings, the applicable Borrower shall select the Borrowing or Borrowings of the applicable Class or Classes of Loans to be prepaid and shall specify such selection in the notice of such prepayment pursuant to paragraph (d) of this Section 2.10.

(d) The applicable Borrower shall notify the Administrative Agent by telephone (confirmed by facsimile) of any prepayment hereunder (i) in the case of prepayment of a Eurodollar Borrowing, not later than 12:00 noon, Local Time, three Business Days before (or, in the case of a Eurodollar Borrowing prepaid pursuant to Section 2.10(b), 10:00 a.m., Local Time, on) the date of prepayment or (ii) in the case of prepayment of any ABR Borrowing, U.S. Base Rate Revolving Borrowing or Canadian Base Rate Revolving Borrowing, not later than 12:00 noon, Local Time, one Business Day before (or, in the case of any such Borrowing prepaid pursuant to Section 2.10(b), 10:00 a.m., Local Time, on) the date of prepayment. Each such telephonic notice shall be irrevocable and shall specify the prepayment date, the principal amount of each Borrowing or portion thereof to be prepaid and, in the case of a mandatory prepayment, a reasonably detailed calculation of the amount of such prepayment, provided that if a notice of prepayment is given in connection with a conditional notice of termination of the Revolving Commitments or Canadian Revolving Sub-Commitments as contemplated by Section 2.08, then such notice of prepayment may be revoked if such notice of termination is revoked in accordance with Section 2.08. In addition, a notice of optional prepayment may state that such notice is conditional upon the consummation of an acquisition or asset sale or upon the effectiveness of other credit facilities or the receipt of proceeds from the issuance of other Indebtedness or the effectiveness of a Chapter 11 Plan or a CCAA Plan, in which case such notice may be revoked if the applicable contingency has not occurred. Promptly following receipt of any such notice, the Administrative Agent shall advise the Lenders of the contents thereof. Each partial prepayment of any Borrowing shall be in an amount that would be permitted in the case of an advance of a Borrowing of the same Type as provided in Section 2.02, except as necessary to apply fully the required amount of a mandatory prepayment. Each prepayment of a Borrowing shall be applied ratably to the Loans included in such prepaid Borrowing. Prepayments shall be accompanied by accrued interest to the extent required by Section 2.12. No notice of prepayment shall be required under this Section 2.10(d) for prepayments made pursuant to Section 2.09(b), 2.09(c) or 2.09(d).

SECTION 2.11. Fees. (a) The Parent Borrower agrees to pay to the Administrative Agent for the account of each Revolving Lender a commitment fee (a "Commitment Fee"), which shall accrue at the Applicable Rate on the average daily unused amount of the Revolving Commitment of such Lender during the period from and including the Effective Date to but excluding the date on which such Lender's Revolving Commitment terminates. Commitment Fees accrued through and including the last day of each calendar month shall be payable on the third Business Day following such last day, commencing on the first such date to occur after the date hereof, provided that all such accrued Commitment Fees shall be payable on the date on which the Revolving Commitments terminate (including in connection with terminations or reductions pursuant to Section 2.08). All Commitment Fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day). For purposes of computing Commitment Fees, a Revolving Commitment of a Revolving Lender shall be deemed to be used to the extent of the outstanding Revolving Loans and Total L/C Exposure of such Lender and to the extent of such Lender's Applicable Percentage of the Stub Availability Block.

(b) The Parent Borrower agrees to pay (i) to the Administrative Agent for the account of each Revolving Lender a participation fee (a "Participation Fee") with respect to its participations in Letters of Credit, which shall accrue at the Alternate Base Rate plus the same Applicable Rate used to determine the interest rate applicable to ABR Borrowings on the average daily amount of such Lender's Total L/C Exposure (excluding any portion thereof attributable to unreimbursed L/C Disbursements) during the period from and including the Effective Date to but excluding the later of the date on which such Lender's Revolving Commitments terminate and the date on which such Lender ceases to have any Total L/C Exposure, and (ii) to the Issuing Bank a fronting fee (a "Fronting Fee"), which shall accrue at the rate of 0.25% per annum on the average daily amount of the Total L/C Exposure (excluding any portion thereof attributable to unreimbursed L/C Disbursements) during the period from and including the Effective Date to but excluding the later of the date of termination of the Revolving Commitments and the date on which there ceases to be any Total L/C Exposure, as well as the Issuing Bank's standard fees with respect to the amendment, renewal or extension of any Letter of Credit or processing of drawings thereunder. Participation Fees and Fronting Fees accrued through and including the last day of each calendar month shall be payable on the third Business Day following such last day, commencing on the first such date to occur after the Effective Date, provided that all such accrued fees shall be payable on the date on which the Revolving Commitments terminate and any such fees accruing after the date on which the Revolving Commitments terminate shall be payable on demand. Any other fees payable to the Issuing Bank pursuant to this paragraph shall be payable within 10 Business Days after written demand. All Participation Fees and Fronting Fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

(c) Each Borrower agrees to pay to the Administrative Agent, for its own account, fees payable in the amounts and at the times separately agreed upon between the Parent Borrower and the Administrative Agent.

(d) The Parent Borrower agrees to pay the Facility Fee, which fee shall be fully earned as of the Effective Date and payable to the Administrative Agent for the account of each Revolving Lender on the Termination Date.

(e) All fees payable hereunder shall be paid on the dates due, in immediately available funds, to the Administrative Agent (or to the Issuing Bank, in the case of fees payable to it) for distribution, in the case of Commitment Fees, Participation Fees and Final Order Fee, to the Lenders entitled thereto. Fees paid (other than any portion of such fees that represent overpayments) shall not be refundable under any circumstances.

SECTION 2.12. Interest. (a) (i) The Loans comprising each ABR Borrowing shall bear interest at the Alternate Base Rate plus the Applicable Rate, (ii) the Loans comprising each U.S. Base Rate Revolving Borrowing shall bear interest at the U.S. Base Rate plus the Applicable Rate and (iii) the Loans comprising each Canadian Base Rate Revolving Borrowing shall bear interest at the Canadian Base Rate plus the Applicable Rate.

(b) The Loans comprising each Eurodollar Borrowing shall bear interest at the Adjusted LIBO Rate for the Interest Period in effect for such Borrowing plus the Applicable Rate.

(c) Notwithstanding the foregoing, if an Event of Default occurs, then, until such Event of Default shall have been cured or waived and shall cease to exist, all amounts outstanding under this Agreement and the other Loan Documents shall bear interest (after as well as before judgment), at a rate per annum equal to (i) in the case of principal of any Loan, 2.00% plus the rate otherwise applicable to such Loan as provided in the other paragraphs of this Section 2.12 or (ii) in the case of any other amount, 2.00% plus the rate applicable to (A) in the case of an amount owed by the Parent Borrower, an ABR

Loan, (B) in the case of an amount owed by the Canadian Subsidiary Borrower and denominated in U.S. Dollars, a U.S. Base Rate Loan or (C) in the case of an amount owed by the Canadian Subsidiary Borrower and denominated in Canadian Dollars, a Canadian Base Rate Loan.

(d) Accrued interest on each Loan shall be payable in arrears on each Interest Payment Date for such Loan and, in the case of Loans in respect of any Class, upon termination of the Revolving Commitments in respect of such Class, provided that (i) interest accrued pursuant to paragraph (c) of this Section 2.12 shall be payable on demand, (ii) in the event of any repayment or prepayment of any Loan (other than repayments or prepayments pursuant to Sections 2.09(b), 2.09(c) and 2.09(d)), accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment, (iii) in the event of any conversion of any Eurodollar Loan prior to the end of the current Interest Period therefor, accrued interest on such Loan shall be payable on the effective date of such conversion and (iv) interest accrued on any Loan made pursuant to Section 2.01(c), 2.01(d) or 2.01(e) shall not be payable (but shall accrue in accordance with Section 2.12(g)) until the first Interest Payment Date occurring on or after the Effective Date, in the case of Loans made pursuant to Section 2.01(d), and the Final Order Date, in the case of Loans made pursuant to Sections 2.01(c) and 2.01(e).

(e) All interest hereunder shall be computed on the basis of a year of 360 days, except that interest computed by reference to (i) the Alternate Base Rate at times when the Alternate Base Rate is based on the Prime Rate and (ii) the U.S. Base Rate or the Canadian Base Rate shall be, other than when computed on the basis of the LIBO Rate, computed on the basis of a year of 365 days (or 366 days in a leap year) and, in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable Alternate Base Rate, U.S. Base Rate, Canadian Base Rate and Adjusted LIBO Rate shall be determined by the Administrative Agent and such determination shall be conclusive absent manifest error.

(f) Solely for purposes of the Interest Act (Canada), (i) whenever any interest or fee under this Agreement is calculated using a rate based on a year of 360 days or 365 days, as the case may be, the rate determined pursuant to such calculation, when expressed as an annual rate, is equivalent to the applicable rate based on a year of 360 days or 365 days, as the case may be, multiplied by a fraction, the numerator of which is the actual number of days in the calendar year in which the period for which such interest or fee is payable (or compounded) ends and the denominator of which is 360 or 365, as the case may be, (ii) the rates of interest under this Agreement are nominal rates and not effective rates or yields and (iii) the principle of deemed reinvestment of interest does not apply to any interest calculation under this Agreement.

SECTION 2.13. Alternate Rate of Interest. If prior to the commencement of any Interest Period for a Eurodollar Borrowing:

(a) the Administrative Agent determines (which determination shall be conclusive absent manifest error) that adequate and reasonable means do not exist for ascertaining the Adjusted LIBO Rate or the LIBO Rate, as applicable, for such Interest Period; or

(b) the Administrative Agent is advised by the Required Lenders that the Adjusted LIBO Rate or the LIBO Rate, as applicable, for such Interest Period will not adequately and fairly reflect the cost to such Lenders (or Lender) of making or maintaining their Loans (or its Loan) included in such Borrowing for such Interest Period;

then the Administrative Agent shall give notice thereof to the applicable Borrower and the Lenders by telephone or facsimile as promptly as practicable thereafter and, until the Administrative Agent notifies the applicable Borrower and the Lenders that the circumstances giving rise to such notice no longer exist,

(i) any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Eurodollar Borrowing shall be ineffective, and (ii) if any Borrowing Request requests a Eurodollar Borrowing, such Borrowing shall be made as (A) in the case of a Borrowing Request made by the Parent Borrower, an ABR Borrowing, and (B) in the case of a Borrowing Request made by the Canadian Subsidiary Borrower denominated in U.S. Dollars, a U.S. Base Rate Revolving Borrowing. During such time, the Adjusted LIBO Rate shall be deemed to be 3.50% for purposes of the definitions of "Alternate Base Rate", "Canadian Base Rate" and "U.S. Base Rate".

SECTION 2.14. Increased Costs. (a) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by, any Lender (except any such reserve requirement reflected in the Adjusted LIBO Rate) or the Issuing Bank, or

(ii) impose on any Lender or the Issuing Bank or the London interbank market any other condition affecting this Agreement or Eurodollar Loans made by such Lender or any Letter of Credit or participation therein,

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Eurodollar Loan (or of maintaining its obligation to make any such Loan) or to increase the cost to such Lender or the Issuing Bank of participating in or maintaining any Letter of Credit or to reduce the amount of any sum received or receivable by such Lender or the Issuing Bank hereunder (whether of principal, interest or otherwise), then the applicable Borrower will pay to such Lender or the Issuing Bank, as the case may be, such additional amount or amounts as will compensate such Lender or the Issuing Bank, as the case may be, for such additional costs incurred or reduction suffered.

(b) If any Lender or the Issuing Bank determines in good faith that any Change in Law regarding capital requirements has or would have the effect of reducing the rate of return on such Lender's or the Issuing Bank's capital or on the capital of such Lender's or the Issuing Bank's holding company, if any, as a consequence of this Agreement or the Loans made by, or participations in Letters of Credit held by, such Lender, or the Letters of Credit deemed issued pursuant to Section 2.04(a) by the Issuing Bank, to a level below that which such Lender or the Issuing Bank or such Lender's or the Issuing Bank's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or the Issuing Bank's policies and the policies of such Lender's or the Issuing Bank's holding company with respect to capital adequacy), then from time to time the applicable Borrower will pay to such Lender or the Issuing Bank, as the case may be, such additional amount or amounts as will compensate such Lender or the Issuing Bank or such Lender's or the Issuing Bank's holding company for any such reduction suffered.

(c) A certificate of a Lender or the Issuing Bank setting forth the amount or amounts necessary to compensate such Lender or the Issuing Bank or its holding company in reasonable detail, as the case may be, as specified in paragraph (a) or (b) of this Section 2.14, shall be delivered to the applicable Borrower and shall be conclusive absent manifest error. The applicable Borrower shall pay such Lender or the Issuing Bank, as the case may be, the amount shown as due on any such certificate within five Business Days after receipt thereof.

(d) Failure or delay on the part of any Lender or the Issuing Bank to demand compensation pursuant to this Section 2.14 shall not constitute a waiver of such Lender's or the Issuing Bank's right to demand such compensation, provided that no Borrower shall be required to compensate a Lender or the Issuing Bank pursuant to this Section 2.14 for any increased costs or reductions incurred

more than 180 days prior to the date that such Lender or the Issuing Bank, as the case may be, notifies such Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's or the Issuing Bank's intention to claim compensation therefor; provided further that if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof.

SECTION 2.15. Break Funding Payments. In the event of (a) the payment of any principal of any Eurodollar Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default), (b) the conversion of any Eurodollar Loan other than on the last day of the Interest Period applicable thereto, (c) the failure to borrow, convert, continue or prepay any Eurodollar Loan on the date specified in any notice delivered pursuant hereto (regardless of whether such notice may be revoked under Section 2.10(d) and is revoked in accordance therewith), or (d) the assignment of any Eurodollar Loan other than on the last day of the Interest Period applicable thereto as a result of a request by the applicable Borrower pursuant to Section 2.18, then, in any such event, the applicable Borrower shall compensate each Lender for the loss, cost and expense attributable to such event. In the case of a Eurodollar Loan, such loss, cost or expense to any Lender shall be deemed to include an amount determined by such Lender to be the excess, if any, of (i) the amount of interest which would have accrued on the principal amount of such Loan had such event not occurred, at the Adjusted LIBO Rate that would have been applicable to such Loan, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue, for the period that would have been the Interest Period for such Loan), over (ii) the amount of interest which would accrue on such principal amount for such period at the interest rate which such Lender would bid were it to bid, at the commencement of such period, for dollar deposits of a comparable amount and period from other banks in the Eurodollar market. A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section 2.15 shall be delivered to the applicable Borrower and shall be conclusive absent manifest error. The applicable Borrower shall pay such Lender the amount shown as due on any such certificate within five Business Days after receipt thereof.

SECTION 2.16. Taxes. (a) Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made free and clear of and without deduction for any Indemnified Taxes or Other Taxes, provided that if any applicable law (as determined in the good faith discretion of an applicable Withholding Agent (as defined below)) requires the deduction or withholding of any Tax from any such payment (including, for the avoidance of doubt, any such deduction or withholding required to be made by the applicable Loan Party or the Administrative Agent, or in the case of any Lender that is treated as a partnership for U.S. Federal income tax purposes, by such Lender for the account of any of its direct or indirect beneficial owners), the applicable Loan Party, the Administrative Agent, the Lender or the applicable direct or indirect beneficial owner of a Lender (any such person, a "Withholding Agent") may make such deductions and shall timely pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax or Other Tax, then the sum payable by the applicable Loan Party shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 2.16) the Administrative Agent, Issuing Bank or Lender (as the case may be) receives an amount equal to the sum it would have received had no such deductions been made.

(b) In addition, the Loan Parties shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(c) Each Loan Party shall indemnify the Administrative Agent, the Issuing Bank and each Lender, within 10 days after written demand therefor, for the full amount of any Indemnified Taxes or Other Taxes paid by the Administrative Agent, the Issuing Bank or such Lender, as the case may be, on

or with respect to any payment by or on account of any obligation of such Loan Party under any Loan Document (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section 2.16) and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the applicable Loan Party by the Issuing Bank or a Lender, or by the Administrative Agent on its own behalf or on behalf of a Lender or the Issuing Bank, shall be conclusive absent manifest error.

(d) Each Lender shall indemnify the Administrative Agent within five Business Days after demand therefor, for the full amount of any Excluded Taxes imposed on such Lender that are paid or payable by the Administrative Agent, and reasonable expenses arising therefrom or with respect thereto, whether or not such Excluded Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error.

(e) As soon as practicable after any payment of Indemnified Taxes, Other Taxes or Excluded Taxes by the applicable Loan Party to a Governmental Authority, such Loan Party shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(f) The Administrative Agent, the Issuing Bank or any Lender that is entitled to an exemption from or reduction of withholding tax under the law of the jurisdiction in which the applicable Borrower is resident, or any treaty to which such jurisdiction is a party, with respect to payments under this Agreement shall deliver to such Borrower (in the case of the Issuing Bank or such Lender, with a copy to the Administrative Agent), at the time or times prescribed by applicable law, such properly completed and executed documentation prescribed by applicable law, if any, or reasonably requested by such Borrower as will permit such payments to be made without withholding or at a reduced rate, provided that the Administrative Agent, the Issuing Bank or such Lender has received written notice from such Borrower advising it of the availability of such exemption and supplying all applicable documentation. The Administrative Agent, the Issuing Bank or such Lender, as the case may be, shall cooperate with the applicable Borrower in good faith to identify the potential availability of such exemption or reduction.

(g) Each Lender hereby represents that it is a Permitted Fee Receiver and agrees to update Internal Revenue Service Form W-9 (or its successor form) or the applicable Internal Revenue Service Form W-8 (or its successor form) upon any change in such Lender's circumstances or if such form expires or becomes inaccurate or obsolete, and to promptly notify the Borrower and the Administrative Agent if such Lender becomes legally ineligible to provide such form.

(h) If the Administrative Agent, the Issuing Bank or a Lender, as the case may be, determines, in its sole discretion, that it has received a refund of any Indemnified Taxes or Other Taxes as to which it has been indemnified by any Loan Party or with respect to which any Loan Party has paid additional amounts pursuant to this Section 2.16, it shall pay over such refund to such Loan Party (but only to the extent of indemnity payments made, or additional amounts paid, by such Loan Party under this Section 2.16 with respect to the Indemnified Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses of the Administrative Agent, the Issuing Bank or such Lender and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that such Loan Party, upon the request of the Administrative Agent, the Issuing Bank or such Lender, as the case may be, agrees to repay the amount paid over to such Loan Party (plus any penalties,

interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent, the Issuing Bank or such Lender in the event the Administrative Agent, the Issuing Bank or such Lender, as the case may be, is required to repay such refund to such Governmental Authority. This Section 2.16 shall not be construed to require the Administrative Agent, the Issuing Bank or any Lender to make available its tax returns (or any other information relating to its taxes which it deems confidential) to any Loan Party or any other Person.

SECTION 2.17. Payments Generally; Pro Rata Treatment; Sharing of Set-offs.

(a) Each Borrower shall make each payment required to be made by it under any Loan Document (whether of principal, interest, fees or reimbursement of L/C Disbursements, or of amounts payable under Section 2.14, 2.15 or 2.16, or otherwise) or under the Orders prior to the time expressly required under such Loan Document or such Order for such payment (or, if no such time is expressly required, prior to 12:00 noon, Local Time), on the date when due, in immediately available funds, without set-off or counterclaim. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Administrative Agent at its offices at 270 Park Avenue, New York, New York 10017 (or, in the case of payments made in respect of the Canadian Obligations, to the Administrative Agent at its offices at 200 Bay Street, 18th Floor, Royal Bank Plaza, South Tower, Toronto, Ontario M5J 2J2), except payments to be made directly to the Issuing Bank as expressly provided herein and except that payments pursuant to Sections 2.14, 2.15, 2.16 and 9.03 shall be made directly to the Persons entitled thereto and payments pursuant to other Loan Documents shall be made directly to the Persons specified therein. The Administrative Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. If any payment under any Loan Document shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All payments under each Loan Document of principal or interest in respect of any Loan (or of any breakage indemnity in respect of any Loan) shall be made in the currency of such Loan; all other payments under each Loan Document shall be made in U.S. Dollars, except as otherwise expressly provided therein. Solely for purposes of determining the amount of Loans available for borrowing purposes, checks and cash or other immediately available funds from collections of items of payment and proceeds of any Collateral shall be applied in whole or in part against the Obligations, on the day of receipt, subject to actual collection.

(b) If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, unreimbursed L/C Disbursements, interest and fees then due hereunder, such funds shall be applied (i) first, towards payment of interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties (based on the U.S. Dollar Equivalent of such amounts or the U.S. Dollar amount thereof, as applicable), and (ii) second, towards the payment of principal and unreimbursed L/C Disbursements then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal and amounts of unreimbursed L/C Disbursements then due to such parties (based on the U.S. Dollar Equivalent of such amounts or the U.S. Dollar amount thereof, as applicable).

(c) At the election of the Administrative Agent, all payments of principal, interest, amounts owing in respect of any L/C Disbursements, fees, premiums, reimbursable expenses (including, without limitation, all reimbursement for fees and expenses pursuant to Section 9.03), and other sums payable under the Loan Documents (in each case, solely to the extent such amounts are payable to the Revolving Lenders), may be paid from the proceeds of Borrowings made hereunder, whether made following a request by the applicable Borrower pursuant to Section 2.03 or a deemed request as provided in this Section 2.17, or may be deducted from any deposit account of the applicable Borrower maintained

with the Administrative Agent. Each Borrower hereby irrevocably authorizes (i) the Administrative Agent to make a Borrowing for the purpose of paying each payment of principal, interest, fees and any other amount as it becomes due under any Loan Document and agrees that all such amounts charged shall constitute Loans and that all such Borrowings shall be deemed to have been requested pursuant to Sections 2.03 or 2.04, as applicable, and (ii) the Administrative Agent to charge any deposit account of such Borrower maintained with the Administrative Agent for each payment of principal, interest, fees and any other amount due under any Loan Document.

(d) If any Lender shall, by exercising any right of set-off or counterclaim or otherwise (including pursuant to a secured claim under Section 553 of the Bankruptcy Code or other security or interest arising from, or in lieu of, such secured claim, received by such Lender under any applicable Bankruptcy Law), obtain payment in respect of any principal of or interest on any of its Loans and amounts owing in respect of participations in L/C Disbursements resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Loans and amounts owing in respect of participations in L/C Disbursements and accrued interest thereon than the proportion received by any other Lender, then the Lender receiving such greater proportion shall purchase (for cash at face value) participations in the Loans and amounts owing in respect of participations in L/C Disbursements of other Lenders to the extent necessary so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and amounts owing in respect of participations in L/C Disbursements, provided that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (ii) the provisions of this paragraph shall not be construed to apply to any payment made by any Borrower, or any application of the Priority Rules, pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or participations in L/C Disbursements to any assignee or participant, other than to the Parent Borrower or any Subsidiary or Affiliate thereof (as to which the provisions of this paragraph shall apply). Each Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against such Borrower rights of set-off and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Borrower in the amount of such participation.

(e) Unless the Administrative Agent shall have received notice from the applicable Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or the Issuing Bank hereunder that such Borrower will not make such payment, the Administrative Agent may assume that such Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or the Issuing Bank, as the case may be, the amount due. In such event, if the applicable Borrower has not in fact made such payment, then each of the Lenders or the Issuing Bank, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or Issuing Bank with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of (i)(A) in the case of Loans made to the Parent Borrower or U.S. L/C Disbursements, the Federal Funds Effective Rate, or (B) in the case of Loans made to the Canadian Subsidiary Borrower or Canadian L/C Disbursements, the rate reasonably determined by the Administrative Agent to be the cost to it of funding such amount, and (ii) a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

(f) If any Lender shall fail to make any payment required to be made by it pursuant to Section 2.04(d) or (e), Section 2.06(a) or (b), Section 2.16(d), Section 2.17(e) or Section 9.03(c), then the

Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), apply any amounts thereafter received by the Administrative Agent for the account of such Lender to satisfy such Lender's obligations under such Sections until all such unsatisfied obligations are fully paid.

SECTION 2.18. Mitigation Obligations; Replacement of Lenders. (a) If any Lender requests compensation under Section 2.14, or if any Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.16, then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the reasonable judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 2.14 or 2.16, as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. Each Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) If any Lender requests compensation under Section 2.14, or if any Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.16, or if any Lender is a Defaulting Lender, then the applicable Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 9.04), all its interests, rights and obligations under this Agreement to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that (i) the applicable Borrower shall have received the prior written consent of the Administrative Agent and the Issuing Bank, which consent shall not unreasonably be withheld, (ii) such Lender shall have received payment of an amount equal to the outstanding principal amount of its Loans, amounts owing in respect of participations in L/C Disbursements, accrued interest thereon, accrued fees and all other amounts payable to it under any Loan Document, from the assignee (to the extent of such outstanding principal, amounts owing in respect of participations in L/C Disbursements and accrued interest and fees) or the applicable Borrower (in the case of all other amounts) and (iii) in the case of any such assignment resulting from a claim for compensation under Section 2.14 or payments required to be made pursuant to Section 2.16, such assignment will result in a reduction in such compensation or payments. A Lender shall not be required to make any such assignment and delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the applicable Borrower to require such assignment and delegation cease to apply.

SECTION 2.19. Returned Payments. If after receipt of any payment which is applied to the payment of all or any part of the Obligations, the Administrative Agent or any Lender is for any reason compelled to surrender such payment or proceeds to any Person because such payment or application of proceeds is invalidated, declared fraudulent, set aside, determined to be void or voidable as a preference, impermissible setoff, or a diversion of trust funds, or for any other reason, then the Obligations or part thereof intended to be satisfied shall be revived and continued and this Agreement shall continue in full force as if such payment or proceeds had not been received by the Administrative Agent or such Lender. The provisions of this Section 2.19 shall be and remain effective notwithstanding any contrary action which may have been taken by the Administrative Agent or any Lender in reliance upon such payment or application of proceeds. The provisions of this Section 2.19 shall survive the termination of this Agreement.

SECTION 2.20. Security Interest in L/C Collateral Account. Pursuant to Section 364(c)(2) of the Bankruptcy Code, the Parent Borrower hereby assigns and pledges to the Administrative Agent, for its benefit and for the benefit of the Issuing Bank and ratable benefit of the Lenders, as their interests may appear, a first priority security interest, senior to all other Liens, if any, in all of the Parent

Borrower's right, title and interest in and to the L/C Collateral Account and any investment of the funds contained therein. Cash held in the L/C Collateral Account shall not be available for use by Holdings, the Borrowers or any of their Subsidiaries, whether pursuant to Section 363 of the Bankruptcy Code or otherwise, and shall be released to the Borrower only as described in Section 2.04(h).

SECTION 2.21. Priority and Liens. (a) Subject to the Orders, Holdings and the Borrowers hereby covenant, represent and warrant that, upon entry of the Interim Order (and the Final Order, as applicable), the Secured Obligations and subject to the Carve-Out:

(i) pursuant to Section 364(c)(1) of the Bankruptcy Code, shall at all times constitute allowed Superpriority Claims in the Bankruptcy Cases having priority over any and all administrative expenses, diminution claims and all other claims against Holdings, the Parent Borrower and the Domestic Subsidiaries, now existing or hereafter arising, of any kind whatsoever, including all administrative expenses of the kind specified in Sections 503(b) or 507(b) of the Bankruptcy Code;

(ii) pursuant to Section 364(c)(2) of the Bankruptcy Code, shall at all times be secured by a valid, binding, continuing, enforceable and fully-perfected first priority senior security interest in and Lien on all tangible and intangible property of Holdings', the Parent Borrower's and the Domestic Subsidiaries' respective estates in the Bankruptcy Cases that is not subject to valid, perfected, non-avoidable and enforceable Liens in existence as of the Petition Date or valid Liens in existence on the Petition Date that are perfected subsequent to such date to the extent permitted by Section 546(b) of the Bankruptcy Code, including all present and future accounts receivable, inventory, general intangibles, chattel paper, real property, leaseholds, fixtures, machinery and equipment, deposit accounts, patents, copyrights, trademarks, tradenames, rights under license agreements and other intellectual property, capital stock of any Subsidiaries and Subsidiary Loan Guarantors and on all cash and investments maintained in the L/C Collateral Account (but excluding Holdings', the Parent Borrower's and the other Loan Guarantors' rights in respect of avoidance actions under the Bankruptcy Code, it being understood that, notwithstanding such exclusion of such actions, the proceeds of such actions shall be subject to such Liens under Section 364(c)(2) of the Bankruptcy Code and available to satisfy the Secured Obligations subject to and effective upon entry of the Final Order);

(iii) pursuant to Section 364(c)(3) of the Bankruptcy Code, shall be secured by valid, binding, continuing, enforceable and fully-perfected security interests in and Liens upon all tangible and intangible property of Holdings, the Parent Borrower and the Domestic Subsidiaries (provided that as set forth in clause (iv) of this sentence, the existing Liens that presently secure the obligations of Holdings, the Parent Borrower and the Domestic Subsidiaries and the Prepetition Guarantors under the Prepetition Credit Agreement will be primed by the Lien in favor of the Administrative Agent as described in clause (iv) of this sentence) that is subject to valid, perfected and non-avoidable Liens in existence on the Petition Date or that is subject to valid Liens in existence on the Petition Date that are perfected subsequent to the Petition Date as permitted by Section 546(b) of the Bankruptcy Code (other than the property referred to in clause (iv) below that is subject to the existing Liens described in clause (iv) below, as to which the Lien in favor of the Administrative Agent and the Lenders will be as described in clause (iv) below), junior to such valid, perfected, and non-avoidable Liens; and

(iv) pursuant to Section 364(d)(1) of the Bankruptcy Code, shall be secured by a valid, binding, continuing, enforceable and fully-perfected first priority senior priming security interest in and senior priming Lien on all of the tangible and intangible property of Holdings, the Parent Borrower and the Domestic Subsidiaries that is subject to existing Liens that presently secure (x) the Prepetition Indebtedness under the Prepetition Credit Agreement, (y) outstanding "Term Loans" under (and as defined in) the Prepetition Credit Agreement and (z) the Senior Secured Notes (but subject and subordinate to any Liens in existence on the Petition Date to which the Liens being primed hereby are subject or become subject subsequent to the Petition Date as permitted by Section 546(b) of the Bankruptcy Code), senior to all of such Liens;

provided, however, that (x) no portion of the Carve-Out may be utilized to fund the prosecution or assertion of any claims against the Administrative Agent, the Lenders or the Issuing Bank, (y) following the Termination Date, amounts in the L/C Collateral Account shall not be subject to the Carve-Out and (z) except as otherwise provided in the Orders, no portion of the Carve-Out shall be utilized for the payment of professional fees and disbursements incurred in connection with any challenge to the amount, extent, priority, validity, perfection or enforcement of the Prepetition Indebtedness owing to the Prepetition Revolving Lenders or to the collateral securing the Prepetition Indebtedness. The Lenders agree that so long as no Event of Default shall have occurred and be continuing, the Parent Borrower, the Canadian Subsidiary Borrower and the other Loan Guarantors shall be permitted to pay compensation and reimbursement of expenses allowed by the Bankruptcy Court and payable under Sections 330 and 331 of the Bankruptcy Code, as the same may be due and payable, and the same shall not reduce the Carve-Out.

(b) Subject to the Canadian Order, Holdings and the Borrowers hereby covenant, represent and warrant that, upon entry of the Canadian Order, the Secured Obligations shall at all times be secured by a valid, binding, continuing, enforceable and, subordinate only to the CCAA Charges, fully perfected first priority security interest in, and first ranking court-ordered charge on (or applicable equivalents outside of the Province of Ontario to such security and charge), all of the existing and after-acquired real and personal, tangible and intangible, assets of the Canadian Subsidiary Borrower and each of the Canadian Subsidiary Loan Parties, including, without limitation, all cash, cash equivalents, bank accounts, deposit accounts, securities accounts, accounts, other receivables, chattel paper, contract rights, inventory, instruments, documents, securities (whether or not marketable), equipment, fixtures, real property interests, franchise rights, patents, tradenames, trademarks, copyrights, industrial designs, intellectual property, general intangibles, intangibles, capital stock, investment property, supporting obligations, letter of credit rights, documents of title, commercial tort claims, causes of action and all substitutions, accessions and proceeds of the foregoing, wherever located, including insurance or other proceeds (the "DIP Lenders' Charge");

(c) Subject to the priorities set forth in subsections (a) and (b) above and to the Carve-Out and the CCAA Charges, as applicable, as to all real property now owned or hereafter acquired the title to which is held by the Parent Borrower, the Canadian Subsidiary Borrower or any of the other Loan Guarantors (whether or not such real property secures the Prepetition Indebtedness), or the possession of which is held by Parent Borrower, the Canadian Subsidiary Borrower or any of the other Loan Guarantors pursuant to leasehold interests, each of the Parent Borrower, the Canadian Subsidiary Borrower and the other Loan Guarantors hereby assigns and conveys as security, grants a security interest in, hypothecates, mortgages, pledges and sets over unto the Administrative Agent for the benefit of the Secured Parties to secure its Secured Obligations all of the right, title and interest in all of such owned real property and in all such leasehold interests, together in each case with all of the right, title and interest of the Parent Borrower, the Canadian Subsidiary Borrower and such Loan Guarantor in and to all buildings, improvements, and fixtures related thereto, any lease or sublease thereof, all general intangibles relating thereto and all proceeds thereof. The Parent Borrower, the Canadian Subsidiary Borrower and each other

Loan Guarantor acknowledges that, pursuant to the Orders and the Canadian Order, as applicable, the Liens in favor of the Administrative Agent in all of such real property and leasehold instruments shall be perfected without the recordation of any instruments of mortgage or assignment or other documents.

SECTION 2.22. Payment of Obligations. Subject to the provisions of Article VII, upon the Termination Date or upon the maturity (whether by acceleration or otherwise) of any of the Obligations under this Agreement or any of the other Loan Documents of the Parent Borrower, the Canadian Subsidiary Borrower and the other Loan Guarantors, the Lenders shall be entitled to immediate payment of such Obligations without further application to or order of the Bankruptcy Court or the Canadian Court.

SECTION 2.23. No Discharge; Survival of Claims. Each of the Parent Borrower, the Canadian Subsidiary Borrower and the Loan Guarantors agrees that (i) its Obligations hereunder shall not be discharged by the entry of an order confirming a Chapter 11 Plan or an order sanctioning a CCAA Plan (and each of Holdings, the Parent Borrower and the Domestic Subsidiaries, pursuant to Section 1141(d)(4) of the Bankruptcy Code, hereby waives any such discharge) and (ii) the Superpriority Claim granted to the Administrative Agent and the Lenders pursuant to the Orders in the Bankruptcy Cases and the DIP Lenders' Charge granted to the Administrative Agent and the Lenders in the Canadian Proceeding pursuant to the Canadian Order and described in Section 2.21 and the other Liens granted to the Administrative Agent pursuant to the Orders and the Canadian Order, if any, and described in Sections 2.20 and 2.21 shall not be affected in any manner by the entry of an order confirming a Chapter 11 Plan or an order sanctioning a CCAA Plan, in each such case unless the Obligations are indefeasibly paid in full in cash on the Chapter 11 Plan effective date or the CCAA Plan effective date, as the case may be, and the actions required to be taken pursuant to Section 2.04(h) in respect of the Letters of Credit have been taken.

SECTION 2.24. Use of Cash Collateral. Notwithstanding anything to the contrary contained herein, the Parent Borrower shall not be permitted to request a Borrowing under Section 2.03 unless the Bankruptcy Court shall have granted to the Parent Borrower use of all cash collateral, subject to the Orders, for the purposes described in Section 5.08.

SECTION 2.25. Defaulting Lenders. Notwithstanding any provision of this Agreement to the contrary, if any Revolving Lender becomes a Defaulting Lender, then the following provisions shall apply for so long as such Lender is a Defaulting Lender:

(a) Commitment Fees shall cease to accrue on the unused portion of the Revolving Commitment of such Defaulting Lender pursuant to Section 2.11(a);

(b) the Revolving Commitment and Revolving Exposure of such Defaulting Lender shall not be included in determining whether all Lenders or the Required Lenders have taken or may take any action hereunder (including any consent to any amendment or waiver pursuant to Section 9.02), provided that any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender which affects such Defaulting Lender differently than other affected Lenders shall require the consent of such Defaulting Lender;

(c) if any Total L/C Exposure exists at the time a Lender becomes a Defaulting Lender then:

(i) all or any part of such Total L/C Exposure shall be reallocated among the non-Defaulting Lenders in accordance with their respective Applicable Percentages but only to the extent (x) the sum of all non-Defaulting Lenders' Revolving Exposures plus such

Defaulting Lender's Total L/C Exposure does not exceed the excess of the total of all non-Defaulting Lenders' Commitments minus the Stub Availability Block and (y) the conditions set forth in Section 4.02 are satisfied at such time;

(ii) if the reallocation described in clause (i) above cannot, or can only partially, be effected, the Parent Borrower shall within one Business Day following notice by the Administrative Agent, cash collateralize (or provide a backstop letter of credit for) such Defaulting Lender's Total L/C Exposure (after giving effect to any partial reallocation pursuant to clause (i) above) in accordance with the procedures set forth in Section 2.04(h) for so long as such Total L/C Exposure is outstanding;

(iii) if the Parent Borrower cash collateralizes (or provides a backstop letter of credit for) any portion of such Defaulting Lender's Total L/C Exposure pursuant to Section 2.25(c), the Parent Borrower shall not be required to pay any Participation Fees to such Defaulting Lender pursuant to Section 2.11(b) with respect to such Defaulting Lender's Total L/C Exposure during the period to the extent of such cash collateralization (or backstop letter of credit);

(iv) if the Total L/C Exposure of the non-Defaulting Lenders is reallocated pursuant to Section 2.25(c), then the fees payable to the Lenders pursuant to Section 2.11(a) and Section 2.11(b) shall be adjusted in accordance with such non-Defaulting Lenders' Applicable Percentages; and

(v) to the extent any Defaulting Lender's Total L/C Exposure is neither cash collateralized (or backstopped) nor reallocated pursuant to Section 2.25(c), then, without prejudice to any rights or remedies of the Issuing Bank or any Lender hereunder, all Participation Fees payable under Section 2.11(b) with respect to such Defaulting Lender's Total L/C Exposure shall be payable to the Issuing Bank until such Total L/C Exposure is cash collateralized and/or reallocated;

(d) so long as any Revolving Lender is a Defaulting Lender, the Issuing Bank shall not be required to extend, renew or amend any Letter of Credit, unless it is satisfied that the related exposure will be 100% covered by the Revolving Commitments of the non-Defaulting Lenders and/or cash collateral (or backstop letters of credit) will be provided by the Parent Borrower in accordance with Section 2.25(c), and participating interests in any such extended, renewed or amended Letter of Credit shall be allocated among non-Defaulting Lenders in a manner consistent with Section 2.25(c)(i) (and Defaulting Lenders shall not participate therein); and

(e) any amount payable to such Defaulting Lender hereunder (whether on account of principal, interest, fees or otherwise and including any amount that would otherwise be payable to such Defaulting Lender pursuant to Section 2.17 but excluding Section 2.18) shall, in lieu of being distributed to such Defaulting Lender, be retained by the Administrative Agent in a segregated account and, subject to any applicable requirements of law, be applied at such time or times as may be determined by the Administrative Agent (i) first, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder, (ii) second, to the payment of any amounts owing by such Defaulting Lender to the Issuing Bank hereunder, (iii) third, to the funding of any Revolving Loan or the funding or cash collateralization of any participating interest in any Letter of Credit in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent, (iv) fourth, if so determined by the Administrative Agent and the Parent Borrower, held in such account as cash collateral for future funding obligations of the Defaulting Lender under this Agreement, (v) fifth, pro rata, to the payment of any amounts owing to the Parent Borrower or

the Lenders as a result of any judgment of a court of competent jurisdiction obtained by the Parent Borrower or any Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement and (vi) sixth, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if such payment is (x) a prepayment of the principal amount of any Loans or reimbursement obligations in respect of L/C Disbursements which a Defaulting Lender has funded its participation obligations and (y) made at a time when the conditions set forth in Section 4.02 are satisfied, such payment shall be applied solely to prepay the Loans of, and reimbursement obligations owed to, all non-Defaulting Lenders pro rata prior to being applied to the prepayment of any Loans, or reimbursement obligations owed to, any Defaulting Lender.

In the event that the Administrative Agent, the Parent Borrower and the Issuing Bank each agrees that a Defaulting Lender has adequately remedied all matters that caused such Lender to be a Defaulting Lender, then the Total L/C Exposure of the Revolving Lenders shall be readjusted to reflect the inclusion of such Lender's Revolving Commitment and on such date such Lender shall purchase at par such of the Revolving Loans of the other Revolving Lenders as the Administrative shall determine may be necessary in order for such Revolving Lender to hold such Revolving Loans in accordance with its Applicable Percentage.

## ARTICLE III

## Representations and Warranties

Each Loan Party represents and warrants to the Lenders that:

SECTION 3.01. Organization; Powers. Each of the Loan Parties and each of its subsidiaries (i) is duly organized, validly existing and, to the extent such concept is applicable in the corresponding jurisdiction, in good standing under the laws of the jurisdiction of its organization, (ii) subject to the entry of the Interim Order (or the Final Order, when applicable) and the Canadian Order and after giving effect thereto, has all requisite power and authority to carry on its business as now conducted and as proposed to be conducted, to execute, deliver and perform its obligations under each Loan Document to which it is a party and to effect the Transactions, and (iii) except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, is qualified to do business in, and is in good standing in, every jurisdiction where the conduct of its business requires such qualification.

SECTION 3.02. Authorization; Enforceability. Upon the entry of the Interim Order (or the Final Order, when applicable) and the Canadian Order and after giving effect thereto, the Transactions are within each Loan Party's corporate (or, to the extent applicable, other organization) powers and have been duly authorized by all necessary corporate (or, to the extent applicable, other organization) action and, if required, stockholder action. Upon the entry of the Interim Order (or the Final Order, when applicable) and the Canadian Order and after giving effect thereto, the Loan Documents to which each Loan Party is a party have been duly executed and delivered by such Loan Party and constitute a legal, valid and binding obligation of such Loan Party, enforceable in accordance with its terms, the Orders and the Canadian Order.

SECTION 3.03. Governmental Approvals; No Conflicts. Subject to the entry of the Interim Order (or the Final Order, when applicable) and the Canadian Order, the Transactions (a) do not require any material consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except (i) such as have been obtained or made and are in full force and effect and (ii) for filings necessary to perfect Liens created pursuant to the Loan Documents, (b) will not violate any Requirement of Law applicable to any Loan Party or any of its subsidiaries, (c) will not violate or

result in a default under any material indenture, agreement or other instrument entered into after the Petition Date binding upon any Loan Party or any of its subsidiaries or its assets, or give rise to a right thereunder to require any payment to be made by any Loan Party or any of its subsidiaries or give rise to a right of, or result in, termination, cancelation or acceleration of any obligation thereunder, and (d) will not result in the creation or imposition of any Lien on any asset of any Loan Party or any of its subsidiaries, except Liens created pursuant to the Loan Documents or under the Orders or the Canadian Order.

SECTION 3.04. Financial Condition; No Material Adverse Change. (a) The Parent Borrower has heretofore furnished to the Administrative Agent the consolidated balance sheet and statements of income, stockholders equity and cash flows of Holdings and its consolidated subsidiaries, in each case as of and for the fiscal year ended December 31, 2007, reported on by Crowe Chizek and Company LLC, independent public accountants. Such financial statements present fairly, in all material respects, the financial position and results of operations and cash flows of Holdings and its consolidated subsidiaries as of such dates and for such periods and, in the case of the financial statements referred to in clause (i) above, were prepared in accordance with GAAP, subject to year-end audit adjustments and the absence of footnotes.

(b) No event, change, effect or circumstance has occurred that, individually or in the aggregate, has had, or could reasonably be expected to have, a Material Adverse Effect, since December 31, 2007.

(c) The projections set forth in the Forecast have been prepared by the Parent Borrower or its financial advisor in light of the past operations of its business, and reflect projections on a week by week basis for each week beginning with March 30, 2009 and ending as of June 26, 2009. Such projections are based upon estimates and assumptions stated therein, all of which the Parent Borrower believes to be reasonable and fair in light of current conditions and current facts known to the Parent Borrower and, as of the Effective Date, reflect the Parent Borrower's estimates of the future financial performance of the Parent Borrower and its Subsidiaries and of the other information projected therein for the periods set forth therein.

SECTION 3.05. Properties. (a) As of the date of this Agreement, Schedule 3.05(a) sets forth the address of each parcel of real property that is owned or leased by each Loan Party. Other than as a result of the stay imposed in the Bankruptcy Cases and the Canadian Proceeding, each of such leases and subleases is valid and enforceable in accordance with its terms and is in full force and effect, and no default by any party to any such lease or sublease exists, except any such default that could not reasonably be expected to result in a Material Adverse Effect. Other than as a result of the Bankruptcy Cases and the Canadian Proceeding, each of the Loan Parties and its subsidiaries has good title to, or valid leasehold interests in, all its real and personal property material to its business (including the Mortgaged Properties), except for minor defects in title that do not materially interfere with its ability to conduct its business as currently conducted.

(b) Each Loan Party and its subsidiaries owns, or is licensed to use, all trademarks, tradenames, copyrights, patents and other intellectual property material to its business as currently conducted, a list (correct and complete in all material respects) of which, as of the date of this Agreement, is set forth on Schedule 3.05(b), and the use thereof by the Loan Parties and their respective subsidiaries does not infringe in any material respect upon the rights of any other Person, and, as of the date of this Agreement, the Loan Parties' rights thereto are not subject to any licensing agreement or similar arrangement, except as set forth on Schedule 3.05(b).

(c) As of the Effective Date, no Loan Party nor any of its subsidiaries has received notice of, or, to the knowledge of any Responsible Officer of any Loan Party or any of its subsidiaries, has

knowledge of, any pending or contemplated condemnation or expropriation proceeding affecting any Mortgaged Property or any sale or disposition thereof in lieu of condemnation except any that may exist in connection with the Bankruptcy Cases or the Canadian Proceeding. Except in respect of any purchase agreement entered into for Mortgaged Property that does not conflict with the terms hereof, neither any Mortgaged Property nor any interest therein is subject to any right of first refusal, option or other contractual right to purchase such Mortgaged Property or interest therein.

SECTION 3.06. Litigation and Environmental Matters. (a) Other than the Bankruptcy Cases and the Canadian Proceeding, there are no actions, suits or proceedings by or before any arbitrator or Governmental Authority pending against or, to the knowledge of any Responsible Officer of any Loan Party or any of its subsidiaries, threatened against or affecting the Loan Parties or any of their respective subsidiaries (i) that could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect (other than the Disclosed Matters) or (ii) that involve any of the Loan Documents or the Transactions.

(b) Except for the Disclosed Matters and except with respect to any other matters that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect (i) no Loan Party nor any of its subsidiaries (A) has received written notice of any claim with respect to any Environmental Liability or knows of any basis for any Environmental Liability, (B) has failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law or (C) has become subject to any Environmental Liability, and (ii) there are no facts, circumstances or conditions that could reasonably be expected to result in any claim for or relating to any Environmental Liability, including any claim in connection with the Bankruptcy Cases or the Canadian Proceeding, against any Loan Party or any of its subsidiaries.

SECTION 3.07. Compliance with Laws and Agreements. Each Loan Party and its subsidiaries is in compliance with (a) all Requirements of Law applicable to it or its property and (b) all indentures, agreements and other instruments entered into after the Petition Date binding upon it or its property, except, in the case of each of clauses (a) and (b), where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

SECTION 3.08. Investment Company Status. No Loan Party nor any of its subsidiaries is an "investment company" as defined in, or subject to regulation under, the Investment Company Act of 1940.

SECTION 3.09. Taxes. Except as set forth on Schedule 3.09, each Loan Party and its subsidiaries (a) has timely filed or caused to be filed all Tax returns and reports required to have been filed, except to the extent that failure to do so could not reasonably be expected to result in a Material Adverse Effect and (b) has paid or caused to be paid all material Taxes required to have been paid by it, except Taxes that are being contested in good faith by appropriate proceedings, provided that such Loan Party or such subsidiary, as applicable, has set aside on its books adequate reserves as required by GAAP and the failure to pay such Taxes could not be expected to result in a Material Adverse Effect.

SECTION 3.10. ERISA. (a) Each of the Parent Borrower and its Subsidiaries is in compliance in all material respects with the applicable provisions of ERISA and the Code and the regulations thereunder as applicable to any Plan. No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events for which liability is reasonably expected to occur, could reasonably be expected to result in a Material Adverse Effect. The present value of all accumulated benefit obligations under all Plans (based on the assumptions used for purposes of Statement of Financial Accounting Standards No. 87) did not, as of the date of the most recent financial statements reflecting such amounts, exceed the fair market value of the assets of such

Plans by more than $26,708,998, and the present value of all accumulated benefit obligations of all underfunded Plans (based on the assumptions used for purposes of Statement of Financial Accounting Standards No. 87) did not, as of the date of the most recent financial statements reflecting such amounts, exceed by more than $26,708,998 the fair market value of the assets of all such underfunded Plans. The minimum funding standards of ERISA and the Code with respect to each Plan have been satisfied.

(b) Canadian Benefit and Pension Plans. The Canadian Pension Plans are duly registered and have been administered in accordance with any Requirement of Law that requires registration and no event has occurred or is reasonably expected to occur which could reasonably be expected to cause the loss of such registered status. All material obligations of the Borrowers and each Subsidiary (including fiduciary, funding, investment and administration obligations) required to be performed in connection with the Canadian Benefit Plans, the Canadian Pension Plans, the Canadian Multi-Employer Plans and the funding agreements therefor have been performed in a timely fashion. As of the Effective Date, there are no outstanding disputes concerning the assets held under the funding agreements for the Canadian Pension Plans or the Canadian Benefit Plans. The funded status, on a wind-up basis, of each of the Canadian Pension Plans as determined in the actuarial valuations last filed with the applicable Governmental Authorities prior to the Effective Date, which were prepared in accordance with applicable law and based on methods and assumptions that are consistent with generally accepted actuarial principles, is set out in Schedule 3.10(b). To the knowledge of the Loan Parties, except as set out in Schedule 3.10(b), there has been no full or partial wind-ups of any Canadian Pension Plan. As of the Effective Date, except as set out in Schedule 3.10(b), the Loan Parties have received no inquiries from any Governmental Authority and no notice of any dispute with respect to the potential application of the decision of the Supreme Court of Canada in Monsanto Canada Inc. v. Superintendent of Financial Services (Ontario) [2004], 3 S.C.R. 152 to any Canadian Pension Plan. No promises of benefit improvements under the Canadian Pension Plans or the Canadian Benefit Plans have been made except where such improvement could not reasonably be expected to have a Material Adverse Effect. All contributions or premiums required to be made or paid by either Borrower or any Subsidiary to the Canadian Pension Plans, any Canadian Multi-Employer Plan or the Canadian Benefit Plans have been made or paid in a timely fashion in accordance with the terms of such plans and all Requirements of Law. All employee contributions to the Canadian Pension Plans, the Canadian Multi-Employer Plans or the Canadian Benefit Plans by way of authorized payroll deduction or otherwise have been properly withheld or collected by each of the Borrowers and the Subsidiaries, as the case may be, and fully paid into such plans in a timely manner. Schedule 3.10(b) lists, as of the Effective Date, all "participation agreements" and collective agreements entered into by either Borrower or any Subsidiary and a labor union with respect to such Borrower or Subsidiary's participation in a Canadian Multi-Employer Plan and the most current executed supplement thereto as of the Effective Date. Subject to Requirements of Law, the contribution obligations of the Canadian Subsidiary Borrower and any Canadian Subsidiary Loan Party to a Canadian Multi-Employer Plan, as set out under the applicable participation agreements and collective agreements, are limited to contributing a specified amount per employee hour worked. There have been no improper withdrawals or applications of the assets of the Canadian Pension Plans. Any assessments owed to the Pension Benefits Guarantee Fund established under the Pension Benefits Act (Ontario) have been paid when due. The pension fund under each Canadian Pension Plan is exempt from the payment of any income tax and, to the knowledge of the Loan Parties, there are no taxes, penalties or interest owing in respect of any such pension fund. All material reports and disclosures relating to the Canadian Pension Plans required by such plans and any Requirement of Law to be filed or distributed have been filed or distributed in a timely manner.

SECTION 3.11. Disclosure. None of the reports, financial statements, certificates or other information furnished by or on behalf of any Loan Party to (i) the Administrative Agent or any Lender in connection with the negotiation of this Agreement or any other Loan Document (as modified or supplemented by other information so furnished and excluding information of a general economic or

industry-specific nature), or (ii) the Bankruptcy Court in connection with the Transactions or the Orders or the Canadian court in connection with the Canadian Proceeding or the Canadian Order, when taken as a whole, contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, provided that with respect to projected financial information, the Parent Borrower and Holdings represent only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time delivered and, if such projected financial information was delivered prior to the Effective Date, as of the Effective Date.

SECTION 3.12. Insurance. Schedule 3.12 sets forth a description of all insurance maintained by or on behalf of the Loan Parties and their respective subsidiaries as of the Effective Date. As of the Effective Date, all premiums then due in respect of such insurance have been paid or have been satisfied by a financing expressly permitted hereunder. Each Loan Party believes that the insurance maintained by or on behalf of Loan Parties and its subsidiaries is in such amounts (with no greater risk retention) and against such risks as is (i) customarily maintained by companies of established repute engaged in the same or similar businesses operating in the same or similar locations and (ii) considered adequate by Holdings and the Parent Borrower.

SECTION 3.13. Capitalization and Subsidiaries. Holdings does not have any subsidiaries other than the Parent Borrower and the Subsidiaries. Schedule 3.13 sets forth (a) a correct and complete list of the name and relationship to the Parent Borrower of each Subsidiary, (b) a true and complete listing of each class of each of the Parent Borrower's and each Subsidiary's authorized Equity Interests, of which all of such issued shares are validly issued, outstanding, fully paid and non-assessable, and owned beneficially and of record by the Persons identified on Schedule 3.13, and (c) the type of entity of the Parent Borrower and each Subsidiary, in each case as of the Effective Date. All of the issued and outstanding Equity Interests issued by any Subsidiary that are owned by any Loan Party have been (to the extent such concepts are relevant with respect to such ownership interests) duly authorized and issued and are fully paid and non-assessable.

SECTION 3.14. Labor Disputes. As of the Effective Date, there are no strikes, lockouts or slowdowns or any other material labor disputes against any Loan Party or any of its subsidiaries pending or, to the knowledge of any Responsible Officer of any Loan Party or any of its subsidiaries, threatened. The hours worked by and payments made to employees of the Loan Parties and their respective subsidiaries have not been in violation of the Fair Labor Standards Act or any other applicable federal, state, provincial, local or foreign law dealing with such matters, except for any such violations that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. All payments due from any Loan Party or any of its subsidiaries, or for which any claim may be made against any Loan Party or any of its subsidiaries, on account of wages and employee health and welfare insurance and other benefits, have been paid or accrued as a liability on the books of the Loan Party or such subsidiary, except for any such failures to do so that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. There is no organizing activity involving any Loan Party or any of its subsidiaries pending or, to the knowledge of any Responsible Officer of any Loan Party or any of its subsidiaries, threatened by any labor union or group of employees, except those that, in the aggregate, could not reasonably be expected to have a Material Adverse Effect. There are no representation proceedings pending or, to the knowledge of any Loan Party or any of its subsidiaries, threatened with the National Mediation Board, and no labor organization or group of employees of any Loan Party or any of its subsidiaries has made a pending demand for recognition, except those that, in the aggregate, could not reasonably be expected to have a Material Adverse Effect. There are no material complaints or charges against any Loan Party or any of its subsidiaries pending or, to the knowledge of any Responsible Officer of any Loan Party or any of its subsidiaries, threatened to be filed with any Governmental Authority or arbitrator based on, arising out of, in connection with, or

otherwise relating to the employment or termination of employment by any Loan Party or any of its subsidiaries of any individual, except those that, in the aggregate, could not reasonably be expected to have a Material Adverse Effect. The consummation of the Transactions will not give rise to any right of termination or right of renegotiation on the part of any union under any collective bargaining agreement to which any Loan Party or any of its subsidiaries is bound.

SECTION 3.15. Indalex UK Limited. As of the Effective Date, Indalex UK Limited does not own, lease, manage or operate any properties or assets (including cash), other than de minimis properties and assets.

SECTION 3.16. Collateral Documents. The Collateral Documents, upon execution and delivery thereof by the parties thereto and upon entry by the Bankruptcy Court of the Interim Order and entry by the Canadian Court of the Canadian Order, will be effective to create in favor of the Administrative Agent, for the benefit of the Secured Parties, a legal, valid and enforceable security interest in the Collateral (as defined in the Collateral Documents) and the proceeds thereof, and, after giving effect to the Orders and the Canadian Order, the Lien created under the Collateral Documents will constitute a fully perfected Lien on, and security interest in, all right, title and interest of the Loan Parties in such Collateral, in each case prior and superior in right to any other Person, other than with respect to (A) Liens having priority by law and (B) the CCAA Charges.

SECTION 3.17. Reorganization Matters. (a) The Bankruptcy Cases were commenced on the Petition Date and the Canadian Proceeding was commenced on April 3, 2009, in each case in accordance with applicable law and proper notice thereof and proper notice of the hearings to consider entry of the Interim Order and entry of the Canadian Order has been given or dispensed with pursuant to the terms of the Canadian Order and proper notice of the hearing to consider entry of the Final Order will be given.

(b) Each of the Interim Order (with respect to the period prior to entry of the Final Order), the Final Order (with respect to the period following the entry of the Final Order) and the Canadian Order is in full force and effect and has not been reversed, stayed, modified, vacated or amended without the written consent of the Administrative Agent and the Required Lenders.

(c) Subject to and after the entry of the Interim Order (with respect to the period prior to entry of the Final Order), the Final Order (with respect to the period following the entry of the Final Order) and the Canadian Order, notwithstanding the provisions of Section 362 of the Bankruptcy Code or the stay of proceedings contained in the Canadian Order, upon the Termination Date (whether by acceleration or otherwise) of any of the Obligations hereunder, the Administrative Agent and Lenders shall be entitled to immediate payment in full in cash of such Obligations and to enforce the remedies provided for hereunder and under the other Loan Documents, without further application to or order by the Bankruptcy Court or the Canadian Court, as more fully set forth in and subject to the Interim Order, the Final Order and the Canadian Order.

ARTICLE IV

Conditions

SECTION 4.01. Effective Date. The obligations of the Lenders to make Loans (including as contemplated by Sections 2.01(c), (d) and (e)) shall not become effective until the date on which each of the following conditions is satisfied (or waived in accordance with Section 9.02):

(a) Credit Agreement and Loan Documents. The Administrative Agent (or its counsel) shall have received (i) from each Loan Party and the Lenders either (A) a counterpart of this Agreement signed on behalf of such party or (B) written evidence reasonably satisfactory to the Administrative Agent (which may include facsimile transmission of a signed signature page of this Agreement) that such party has signed a counterpart of this Agreement and (ii) duly executed copies of the other Loan Documents and such other certificates, documents, instruments and agreements as the Administrative Agent shall reasonably request in connection with the transactions contemplated by this Agreement and the other Loan Documents, including any promissory notes requested by a Lender pursuant to Section 2.09(h) payable to the order of each such requesting Lender.

(b) Closing Certificates; Certified Certificate of Incorporation; Good Standing Certificates. The Administrative Agent shall have received (i) a certificate of each Loan Party, dated the Effective Date and executed by its Secretary or Assistant Secretary, which shall (A) certify the resolutions of its Board of Directors, members or other body authorizing the execution, delivery and performance of the Loan Documents to which it is a party, (B) identify by name and title and bear the signatures of the Financial Officers and any other officers of such Loan Party authorized to sign the Loan Documents to which it is a party, and (C) contain appropriate attachments, including the certificate or articles of incorporation or organization of each Loan Party certified by the relevant authority of the jurisdiction of organization of such Loan Party and a true and correct copy of its by-laws or operating, management or partnership agreement, and (ii) a long-form good standing certificate for each Loan Party from its jurisdiction of organization, all in form and substance reasonably satisfactory to the Administrative Agent and its counsel.

(c) No Default Certificate. The Administrative Agent shall have received a certificate, dated the Effective Date and signed by a Financial Officer, (i) stating that, as of the Effective Date and after giving effect to the Transactions, no Default has occurred and is continuing, (ii) stating that the representations and warranties contained in Article III that are qualified by materiality shall be true and correct, and the representations and warranties that are not so qualified shall be true and correct in all material respects, as of the Effective Date, and (iii) certifying any other factual matters as may be reasonably requested by the Administrative Agent.

(d) Fees. The Administrative Agent shall have received all fees (including the Up-front Fee, but excluding the Final Order Fee) required to be paid to it and to the Lenders, and all expenses for which invoices have been presented on or before the Effective Date (including the reasonable fees and expenses of legal counsel to the Administrative Agent and to any Lender, and the financial advisor to the Administrative Agent's legal counsel).

(e) Canadian Perfection Certificate; Lien Searches. The Administrative Agent shall have received (i) a completed Canadian Perfection Certificate, dated the Effective Date and signed by a Financial Officer or legal officer of the Canadian Subsidiary Borrower, together with all attachments contemplated thereby, and (ii) the results of a recent lien search in (A) each of the jurisdictions where assets of the Loan Parties are located and (B) the jurisdiction of formation of each Loan Party, and such search shall reveal no Liens on any of the assets of the Loan Parties or their respective subsidiaries except

for Liens permitted by Section 6.02 or discharged on or prior to the Effective Date pursuant to documentation reasonably satisfactory to the Administrative Agent.

(f) Pledged Stock; Stock Powers; Pledged Notes. The Administrative Agent shall have received (i) the certificates representing the Equity Interests to be pledged pursuant to the Collateral Documents, together with an undated stock power for each such certificate executed in blank by a duly authorized officer of the pledgor thereof and (ii) each promissory note (if any) pledged to the Administrative Agent pursuant to the Collateral Documents endorsed (without recourse) in blank (or accompanied by an executed transfer form in blank) by the pledgor thereof.

(g) Filings, Registrations and Recordings. Each document (including any financing statement, fixture filing, mortgage, deed of trust or other document) required by the Collateral Documents or under law or reasonably requested by the Administrative Agent to be filed, registered or recorded in order to create or maintain in favor of the Administrative Agent, for the benefit of the Lenders, a perfected Lien on the Collateral described therein, prior and superior in right to any other Person (other than the CCAA Charges and Liens having priority by law), shall be in proper form for filing, registration or recordation.

(h) Mortgages, etc. The Administrative Agent shall have received, with respect to each Mortgaged Property (other than with respect to the Mortgaged Properties located in British Columbia and Alberta), each of the following, in form and substance reasonably satisfactory to the Administrative Agent, to the extent requested by the Administrative Agent (orally or in writing):

(i) a Mortgage on such property;

(ii) evidence that a counterpart of the Mortgage (or any necessary amendment to any Mortgage existing immediately prior to the Effective Date to reflect the consummation of the Transactions) has been recorded (or delivered to the title insurance company to be recorded after the consummation of the Transactions) in the place necessary, in the Administrative Agent's judgment, to create a valid and enforceable first priority Lien in favor of the Administrative Agent for the benefit of itself and the Lenders;

(iii) evidence of a commitment to title insure from an insurer acceptable to the Administrative Agent, acting reasonably with an assertion from such insurer that its gap coverage has been declared to be in effect; and

(iv) such other information, documentation, and certifications as may be reasonably required by the Administrative Agent.

(i) Consummation of Transactions. The commencement of the Bankruptcy Cases and the Canadian Proceeding and the consummation of the other Transactions contemplated hereunder and by the other Loan Documents shall have been duly authorized by the Borrowers and each other Loan Guarantor.

(j) Indebtedness. After giving effect to the Transactions, none of Holdings, the Parent Borrower nor any Subsidiary shall have outstanding any Indebtedness or any shares of preferred stock, other than (i) the Loans and other Indebtedness incurred under this Agreement and the other Loan Documents, (ii) Prepetition Indebtedness, (iii) the Senior Secured Notes, (iv) Indebtedness set forth on Schedule 6.01 and (v) the other Indebtedness permitted by Section 6.01.

(k) Consents and Approvals. All requisite material Governmental Authorities shall have approved or consented to the Transactions to the extent required and there shall be no governmental or judicial action, actual or threatened, that could reasonably be expected to restrain, prevent or impose materially burdensome conditions on the Transactions.

(l) Other Documents. The Administrative Agent shall have received such other documents as the Administrative Agent, the Issuing Bank, any Lender or their respective counsel may have reasonably requested.

(m) Interim Order. Entry of an order of the Bankruptcy Court in substantially the form of Exhibit H (the "Interim Order") approving the Loan Documents, granting the Superpriority Claim status in respect of the Obligations and the senior priming and other Liens described in Article II hereof and provided for in the Collateral Documents, which Interim Order (i) shall have been entered, upon an application or motion of the Parent Borrower reasonably satisfactory in form and substance to the Administrative Agent, on such prior notice to such parties as required under the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure and the Local Rules for the District of Delaware, (ii) shall authorize extensions of credit in an amount not to exceed $[•] (excluding amounts in respect of the Prior Swap), (iii) shall approve the payment by the Parent Borrower of all of the fees and expenses provided for in the Loan Documents (including the reasonable attorneys' fees and expenses of the Administrative Agent, the Issuing Bank and the Lenders), (iv) shall be in full force and effect, (v) shall have authorized the use by the Borrowers and the Loan Guarantors of any cash collateral of the Loan Parties, (vi) shall provide for no adequate protection in respect of the diminution in value of the interests of the Sponsor or any Sponsor Affiliate (in its capacity as a term lender under the Prepetition Credit Agreement) or any holder of Senior Secured Notes occurring as a result of the use of cash collateral, the priming of liens and the imposition of the automatic stay, other than replacement Liens, which Liens shall have the priority set forth in the Orders (the "Replacement Liens"), (vii) shall not have been vacated, stayed, reversed, modified or amended in any respect without the written consent of the Administrative Agent and the Required Lenders, (viii) shall have permitted the application of proceeds to the Prepetition Indebtedness and the advancing of Loans to the Borrowers having the priority set forth in Section 2.21, (ix) shall provide for Adequate Protection for the Prepetition Agent and the Prepetition Revolving Lenders as set forth in the form of Exhibit H, and (x) shall be in form and substance acceptable to the Administrative Agent and the Required Lenders; and, if the Interim Order is the subject of a pending appeal in any respect, neither the making of any Loans nor the deemed issuance pursuant to Section 2.04(a) of any Letter of Credit nor the performance by the Borrowers or any of the other Loan Guarantors of any of their respective obligations hereunder or under the Loan Documents or under any other instrument or agreement referred to herein shall be the subject of a presently effective stay pending appeal.

(n) Canadian Order. Issuance and entry by the Canadian Court of the Canadian Order in form and substance satisfactory to the Administrative Agent and the Required Lenders, which Canadian Order (i) shall have been made upon the application of the Canadian Subsidiary Borrower and Canadian Subsidiary Loan Parties, in form and substance satisfactory to the Administrative Agent and the Required Lenders and (ii) shall not have been vacated, stayed, reversed, modified or amended in any respect without the prior written consent of the Administrative Agent and the Required Lenders and shall not be subject to a pending appeal or motion for leave to appeal or other proceeding to set aside such order; and if the Canadian Order is the subject of a pending appeal in any respect, neither the making of any Loans nor the deemed issuance pursuant to Section 2.04(a) of any Letter of Credit nor the performance by the Borrowers or any of the other Loan Guarantors of any of their respective obligations hereunder or under the Loan Documents or under any other instrument or agreement referred to herein shall be the subject of a presently effective stay pending appeal.

(o) Forecast. The Lenders shall have received and be satisfied with the Forecast.

(p) The Administrative Agent shall have received a Daily Borrowing Base Certificate on or within one Business Day prior to the Effective Date.

(q) The Parent Borrower shall have retained an investment bank or other strategic advisor acceptable to the Required Lenders to assist it in consummating a Company Sale (it being understood and agreed that Jefferies & Company, Inc. is an acceptable investment bank).

The Administrative Agent shall notify the Parent Borrower and the Lenders of the Effective Date, and such notice shall be conclusive and binding. Notwithstanding the foregoing, the obligations of the Lenders to make Loans (including as contemplated by Sections 2.01(c), 2.01(d) and 2.01(e)) shall not become effective unless each of the foregoing conditions is satisfied (or waived pursuant to Section 9.02) at or prior to 11:00 a.m., New York City time, the date five Business Days after the date of this Agreement (and, in the event such conditions are not so satisfied or waived, the Commitments shall terminate at such time).

SECTION 4.02. Each Credit Event. (a) The obligation of each Lender to make a Loan on the occasion of any Borrowing and of the Issuing Bank to amend, renew or extend any such Letter of Credit, is subject to the satisfaction of the following conditions:

(i) the representations and warranties of each of the Loan Parties set forth in the Loan Documents that are qualified by materiality shall be true and correct, and the representations and warranties that are not so qualified shall be true and correct in all material respects, in each case on and as of the date of such Borrowing or the date of the amendment, renewal or extension of such Letter of Credit, as applicable (other than with respect to any representation and warranty that expressly relates to an earlier date, in which case such representation and warranty shall be true and correct, or true and correct in all material respects, as the case may be, as of such earlier date); and

(ii) at the time of and immediately after giving effect to such Borrowing or the amendment, renewal or extension of such Letter of Credit, as applicable, no Default shall have occurred and be continuing.

(iii) The Interim Order and the Canadian Order shall be in full force and effect and shall not have been vacated, stayed, reversed, modified or amended in any respect in a manner determined by the Administrative Agent or the Required Lenders to be adverse to the interests of the Administrative Agent and the Lenders and an order of the Bankruptcy Court in substantially the form of the Interim Order (with only such modifications thereto as are satisfactory in form and substance to the Administrative Agent and the Required Lenders) (the "Final Order") shall have been entered by the Bankruptcy Court no later than 30 days after the entry of the Interim Order, and at such time the Final Order shall be in full force and effect, shall authorize extensions of credit up to $[•] (excluding amounts in respect of the Prior Swap), shall have approved the conversion of certain Prepetition Revolving Loans, Prepetition Swap Obligations, Prepetition Banking Services Obligations and Prepetition Letters of Credit (and granted such converted Prepetition Revolving Loans, Prepetition Swap Obligations, Prepetition Banking Services Obligations and Prepetition Letters of Credit Superpriority Claim status, secured by Liens and having the priority, in each case as set forth in Section 2.21), shall have approved the Adequate Protection and shall not have been vacated, stayed, reversed, modified or amended in any respect in a manner determined by the Administrative Agent or the Required Lenders to be adverse to the interests of the Administrative Agent and the Lenders; and if the Interim Order, the Final Order or the Canadian Order is the subject of

a pending appeal in any respect, neither the making of the Loans, the amendment, renewal or extension of any Letter of Credit, nor the performance by the Parent Borrower or any Loan Guarantor of any of their respective obligations under any of the Loan Documents shall be subject to a stay pending appeal. Each such Order as then in effect shall permit the use of cash collateral under the Prepetition Credit Agreement by the Borrower and the Loan Guarantors in a manner satisfactory to the Administrative Agent and the Required Lenders.

(iv) The Lenders shall have received and be satisfied with the most recent Cash Flow Forecast required to be delivered pursuant to Section 5.01(j).

Each Borrowing and each amendment, renewal or extension of a Letter of Credit shall be deemed to constitute a representation and warranty by the applicable Borrower on the date thereof as to the matters specified in this Section 4.02(a).

(b) Prior to (i) the making of each Loan (other than as contemplated by Sections 2.01(c), 2.01(d) and 2.01(e)), the Administrative Agent shall have received a Borrowing Request meeting the requirements of Section 2.03 and a Daily Borrowing Base Certificate in compliance with Section 5.01(g), and (ii) the amendment, renewal or extension of each Letter of Credit, the Administrative Agent and the Issuing Bank shall have received a notice meeting the requirements of Section 2.04(b).

## ARTICLE V

## Affirmative Covenants

Until the Commitments have expired or been terminated and the principal of and interest on each Loan and all fees, expenses and other amounts payable under any Loan Document shall have been paid in full and all Letters of Credit shall have expired or terminated (or shall have been cash collateralized or supported by a letter of credit as provided in Section 2.04(h)) and all L/C Disbursements shall have been reimbursed, the Loan Parties covenant and agree, jointly and severally, with the Lenders that:

SECTION 5.01. Financial Statements; Borrowing Base and Other Information. Holdings and the Parent Borrower will furnish to the Administrative Agent and each Lender:

(a) within 120 days after the end of each fiscal year of the Parent Borrower, the unaudited consolidated balance sheet and related statements of income, stockholders' equity and cash flows for each of the Parent Borrower and its consolidated subsidiaries, on the one hand, and the Canadian Subsidiary Borrower and its consolidated subsidiaries, on the other hand, in each case as of the end of and for such year, setting forth in each case in comparative form the figures for the previous fiscal year, all certified by a Financial Officer as presenting fairly in all material respects the financial condition and results of operations of the Parent Borrower and its consolidated subsidiaries or the Canadian Subsidiary Borrower and its consolidated subsidiaries, as the case may be, on a consolidated basis in accordance with GAAP (or, in the case of the financial statements of the Canadian Subsidiary Borrower and its consolidated subsidiaries, Canadian GAAP) consistently applied;

(b) within 45 days after the end of each of the first three fiscal quarters of each fiscal year of the Parent Borrower, the unaudited consolidated balance sheet and related statements of income, stockholders' equity and cash flows for each of the Parent Borrower and its consolidated subsidiaries, on the one hand, and the Canadian Subsidiary Borrower and its consolidated

subsidiaries, on the other hand, in each case as of the end of and for such fiscal quarter and the then elapsed portion of the fiscal year, setting forth in each case in comparative form the figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous fiscal year, all certified by a Financial Officer as presenting fairly in all material respects the financial condition and results of operations of the Parent Borrower and its consolidated subsidiaries or the Canadian Subsidiary Borrower and its consolidated subsidiaries, as the case may be, on a consolidated basis in accordance with GAAP (or, in the case of the financial statements of the Canadian Subsidiary Borrower and its consolidated subsidiaries, Canadian GAAP) consistently applied, subject to normal year-end audit adjustments and the absence of footnotes;

(c) within 30 days after the end of each of the first two fiscal months of each fiscal quarter of the Parent Borrower, the unaudited consolidated balance sheet and related statements of income, stockholders' equity and cash flows for each of the Parent Borrower and its consolidated subsidiaries, on the one hand, and the Canadian Subsidiary Borrower and its consolidated subsidiaries, on the other hand, in each case as of the end of and for such fiscal month and the then elapsed portion of the fiscal year, setting forth in each case in comparative form the figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous fiscal year, all certified by a Financial Officer as presenting fairly in all material respects the financial condition and results of operations of the Parent Borrower and its consolidated subsidiaries or the Canadian Subsidiary Borrower and its consolidated subsidiaries;

(d) concurrently with any delivery of financial statements under clause (a), (b) or (c) above, a compliance certificate of a Financial Officer in substantially the form of Exhibit D (i) certifying as to whether a Default has occurred and, if a Default has occurred, specifying the details thereof and any action taken or proposed to be taken with respect thereto, (ii) stating whether any change in GAAP or in the application thereof has occurred since the date of the audited financial statements referred to in Section 3.04 and, if any such change has occurred, specifying the effect of such change on the financial statements accompanying such certificate and (iii) setting forth calculations demonstrating compliance with each of Sections 6.16, 6.17 and 6.18;

(e) as soon as available, but in any event not more than 30 days after the end of each fiscal year of the Parent Borrower, a copy of the plan and forecast (including a projected consolidated and consolidating balance sheet, income statement and funds flow statement) of the Parent Borrower and the Subsidiaries on a consolidated basis for each month of the upcoming fiscal year (the "Projections") in form reasonably satisfactory to the Administrative Agent and, promptly when available, any significant revisions of such Projections;

(f) on or before the first Wednesday following the end of each calendar week, as of the end of the week then ended, a Weekly Borrowing Base Certificate and supporting information in connection therewith, together with any additional reports with respect to each Borrowing Base as the Administrative Agent may reasonably request;

(g) on or before 11:00 a.m., New York City time, on each Business Day, as of the end of the previous Business Day, a Daily Borrowing Base Certificate and supporting information in connection therewith, together with any additional reports with respect to each Borrowing Base as the Administrative Agent may reasonably request;

(h) promptly after the same become publicly available, copies of all periodic and other reports, proxy statements and other materials filed by Holdings, the Parent Borrower or any Subsidiary with the SEC, or any Governmental Authority succeeding to any or all of the functions of the SEC, or with any national securities exchange, or distributed by Holdings to its shareholders generally, as the case may be;

(i) promptly following any written request therefor from the Administrative Agent (on its own behalf or on behalf of any Lender), such other information regarding the operations, business affairs and financial condition of Holdings, the Parent Borrower or any Subsidiary, or compliance with the terms of this Agreement, as the Administrative Agent (on its own behalf or on behalf of such Lender) may reasonably request (including any information required to be provided by the Parent Borrower and the Canadian Subsidiary Borrower pursuant to Section 9.14);

(j) promptly after the request by the Administrative Agent or any Lender, copies of (i) any documents described in Section 101(k)(1) of ERISA that the Parent Borrower or any of its ERISA Affiliates may request with respect to any Multiemployer Plan and (ii) any notices described in Section 101(l)(1) of ERISA that the Parent Borrower or any of its ERISA Affiliates may request with respect to any Multiemployer Plan, provided that if the Parent Borrower or any of its ERISA Affiliates has not requested such documents or notices from the administrator or sponsor of the applicable Multiemployer Plan, the Parent Borrower or the applicable ERISA Affiliate shall promptly make a request for such documents or notices from such administrator or sponsor and shall provide copies of such documents and notices promptly after receipt thereof;

(k) on the first Wednesday in New York City following the end of each calendar week, (i) a Cash Flow Forecast and a cash report reflecting aggregate cash balances in all accounts of the Parent Borrower and its Subsidiaries with financial and other institutions as of the immediately preceding Saturday and (ii) a comparison of actual performance for the preceding week to the Cash Flow Forecast previously provided and an explanation for any material variances, in form substantially similar to the forecast and report delivered under the Prepetition Credit Agreement prior to the Petition Date, together with a certificate of the Chief Financial Officer or the Chief Executive Officer to the effect that such forecasts have been prepared in good faith and based upon assumptions believed to be reasonable at the time when prepared; and

(l) on or prior to the fifteenth calendar day of each calendar month, an updated and supplemented Forecast reflecting any changes to the Forecast previously delivered, together with a certificate of the Chief Financial Officer or the Chief Executive Officer to the effect that such Forecast has been prepared in good faith and based upon assumptions believed to be reasonable at the time when prepared.

SECTION 5.02. Notices of Material Events. Holdings and the Parent Borrower will furnish to the Administrative Agent (for distribution to each Lender) prompt written notice of a Responsible Officer's obtaining knowledge of any of the following:

(a) the occurrence of any Default;

(b) receipt of any notice of any governmental investigation or any litigation or proceeding commenced or threatened against any Loan Party that (i) seeks material damages, (ii) seeks material injunctive relief, (iii) is asserted or instituted against any Plan, any Canadian Pension Plan, any Canadian Benefits Plan or, in each case, its fiduciaries or its assets, (iv) alleges criminal misconduct by any Loan Party, (v) alleges the material violation of, or seeks material remedies in connection with, any Environmental Laws or alleges a material Environmental Liability, (vi)

contests any material tax, fee, assessment or other governmental charge, or (vii) involves any product recall;

(c) any Lien (other than Liens permitted hereunder) or claim made or asserted against any of the Collateral;

(d) any loss, damage or destruction to the Collateral in the amount of $1,000,000 or more, whether or not covered by insurance, or the commencement of any action or proceeding for the taking of any material portion of or material interest in the Collateral under power of eminent domain or by condemnation or similar proceeding;

(e) any and all default notices received under or with respect to any leased location or public warehouse where Collateral is located in excess of $500,000 (which shall be delivered within five Business Days after receipt thereof);

(f) the occurrence of any ERISA Event or any fact or circumstance that gives rise to a reasonable expectation that any ERISA Event will occur that, in either case, alone or together with any other ERISA Events that have occurred or are reasonably expected to occur, could reasonably be expected to result in material liability of Holdings, the Parent Borrower and the Subsidiaries;

(g) any failure of either Borrower or any Subsidiary to make any contribution required to pay the "normal cost", as defined in the Regulations to the Pension Benefits Act (Ontario), of the benefits under any Canadian Pension Plan or any required contribution to a Canadian Multi-Employer Plan or the receipt of any notice from the funding agent for any Canadian Pension Plan or Canadian Multi-Employer Plan or from any Governmental Authority to such effect that could reasonably be expected to result in a material liability to Holdings, the Parent Borrower and the Subsidiaries;

(h) any contribution by a Borrower or any Subsidiary to a Canadian Pension Plan which is a "special payment", as defined in the Regulations to the Pension Benefits Act (Ontario), to fund any unfunded liability thereunder which is made during the period covered by the Canadian Order; and

(i) any other development that results in, or could reasonably be expected to result in, a Material Adverse Effect.

Each notice delivered under this Section 5.02 shall be accompanied by a statement of a Financial Officer or other executive officer of the Parent Borrower setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto.

SECTION 5.03. Existence. Each Loan Party will, and will cause each of its subsidiaries other than Indalex UK Limited to, do or cause to be done all things necessary (a) to preserve, renew and keep in full force and effect (i) its legal existence and (ii) except as otherwise excused by the Bankruptcy Code or the Canadian Order, the rights, qualifications, privileges, permits, franchises, governmental authorizations, intellectual property rights, licenses and permits material to the conduct of its business, except, in the case of this subclause (ii), to the extent that failure to do so could not reasonably be expected to result in a Material Adverse Effect, and (b) maintain all requisite authority to conduct its business in each jurisdiction in which its business is conducted, except, in the case of this clause (b), to the extent that the failure to do so could not reasonably be expected to result in a Material Adverse Effect,

provided that the foregoing shall not prohibit any merger, consolidation, liquidation or dissolution permitted under Section 6.03.

SECTION 5.04. Payment of Obligations. Except in accordance with the Bankruptcy Code, the Canadian Order, the CCAA or any applicable order issued by the Bankruptcy Court or the Canadian Court, each Loan Party will, and will cause each of its subsidiaries to, pay or discharge all Material Indebtedness, all lawful claims for labor, materials and supplies or otherwise that constitute administrative expense under Section 503(b) of the Bankruptcy Code, all material Taxes and all other material liabilities and obligations that have resulted, or may result, in a Lien being imposed on any Loan Party's assets (which, in the case of the Canadian Pension Plans, shall mean all contributions required to pay the "normal cost" of the benefits thereunder, as defined in the Regulations to the Pension Benefits Act (Ontario) and in the case of a Canadian Multi-Employer Plan, shall mean the contributions thereto required under the applicable collective agreement or participation agreement) (other than Liens expressly permitted by Section 6.02), in each case arising after the Petition Date, before the same shall become delinquent or in default, except where (a) the validity or amount thereof is being contested in good faith by appropriate proceedings, (b) such Loan Party or such subsidiary has set aside on its books adequate reserves with respect thereto in accordance with GAAP, (c) such contest effectively suspends collection of the contested obligation and the enforcement of any Lien securing such obligation and (d) the failure to make payment pending such contest could not reasonably be expected to result in a Material Adverse Effect.

SECTION 5.05. Maintenance of Properties. Each Loan Party will, and will cause each of its subsidiaries to, keep and maintain all property material to the conduct of its business in good working order and condition, ordinary wear and tear, casualty and condemnation excepted.

SECTION 5.06. Books and Records; Inspection Rights. (a) Each Loan Party will, and will cause each of its subsidiaries to, (i) keep proper books of record and account in which full, true and correct entries are made of all dealings and transactions in relation to its business and activities and (ii) permit any representatives designated by the Administrative Agent, any Lender or any other party in interest to the Bankruptcy Cases or the Canadian Proceeding (including employees of the Administrative Agent, any Lender or any consultants, accountants, lawyers and appraisers retained by the Administrative Agent), upon reasonable prior notice, to visit and inspect its properties during normal business hours, to examine and make extracts from its books and records (including environmental assessment reports and Phase I or Phase II studies), to discuss its affairs, finances and condition with its officers and independent accountants and to meet with its suppliers, all at such reasonable times and as often as reasonably requested, provided that a representative of the Loan Parties shall have the right to be present. The Loan Parties acknowledge that the Administrative Agent, after exercising its rights of inspection, may prepare and distribute to the Lenders certain Reports pertaining to the Loan Parties' assets for internal use by the Administrative Agent and the Lenders.

(b) Each Loan Party will, and will cause each of its subsidiaries to, permit any representatives designated by the Administrative Agent (including any consultants, accountants, lawyers and appraisers retained by the Administrative Agent) to conduct periodic collateral examinations and periodic collateral appraisals of the Parent Borrower's and the Canadian Subsidiary Borrower's computation of their respective Borrowing Base and the assets included in each such Borrowing Base, all at such reasonable times and as often as reasonably requested by the Administrative Agent in its sole discretion. The Parent Borrower shall pay the reasonable fees and expenses (including internally allocated fees and expenses of employees of the Administrative Agent) of any such representatives retained by the Administrative Agent as to which invoices have been furnished to conduct any such examination or appraisal, including the reasonable fees and expenses associated with collateral monitoring services performed by the IB ABL Portfolio Mgmt Group of the Administrative Agent. The

Loan Parties acknowledge that the Administrative Agent, after exercising its rights with respect to collateral examinations and collateral appraisals, may prepare and distribute (and, upon the request of any Lender, will distribute) to the Lenders certain Reports pertaining to the Loan Parties' assets for internal use by the Administrative Agent and the Lenders. Each of the Parent Borrower and the Canadian Subsidiary Borrower also agrees to modify or adjust the computation of its Borrowing Base (which may include maintaining additional reserves or modifying the eligibility criteria for the components of the Borrowing Base) to the extent required by the Administrative Agent or the Required Lenders as a result of any such collateral examination or collateral appraisal or otherwise.

(c) In the event that historical accounting practices, systems or reserves relating to the components of either Borrowing Base are modified in a manner that is adverse to the Lenders in any material respect, the Parent Borrower and the Canadian Subsidiary Borrower, as applicable, shall agree to maintain such additional reserves (for purposes of computing the applicable Borrowing Base) in respect of the components of the applicable Borrowing Base and make such other adjustments to its parameters for including the components of the applicable Borrowing Base as the Administrative Agent in its Permitted Discretion shall require based upon such modifications.

SECTION 5.07. Compliance with Laws. Each Loan Party will, and will cause each of its subsidiaries to, comply with all Requirements of Law applicable to it or its property, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

SECTION 5.08. Use of Proceeds; Forecast. (a) The Borrowers will use the proceeds of the Loans solely (i) to pay fees and expenses associated with this Agreement (including attorneys' fees and expenses required to be paid pursuant to Section 9.03), (ii) to make payments in respect of Adequate Protection, (iii) to make payments or fund amounts otherwise permitted by this Agreement and (iv) subject to clause (b) below, for working capital and general corporate purposes. The Borrower shall use the entire amount of the proceeds of each Loan solely in accordance with this Section 5.08, provided that nothing herein shall in any way prejudice or prevent the Administrative Agent or the Lenders from objecting, for any reason, to any requests, motions or applications made in the Bankruptcy Court or the Canadian Court, including any applications for interim or final allowances of compensation for services rendered or reimbursement of expenses incurred under Section 330 or 331 of the Bankruptcy Code, by any party in interest. No part of the proceeds of any Loan will be used, whether directly or indirectly, for any purpose that entails a violation of any of the Regulations of the Board, including Regulations T, U and X.

(b) For each cumulative period commencing with and including the week ended April 3, 2009, and ending on any Friday thereafter (the first such period being the week ended April 3, 2009): (i) the actual aggregate cash receipts during such period for all line items in the Forecast delivered April 8, 2009 shall exceed 80% of the projected aggregate cash receipts for such period and (ii) the actual aggregate cash disbursements during such period for all line items in the Forecast delivered April 8, 2009 shall not exceed 120% of the projected aggregate cash disbursements for such period.

SECTION 5.09. Insurance. Each Loan Party will, and will cause each of its subsidiaries to, maintain with financially sound and reputable carriers (a) insurance in such amounts (with no greater risk retention) with customary deductibles and against such risks (including loss or damage by fire and loss in transit; theft, burglary, pilferage, larceny, embezzlement, and other criminal activities; business interruption; and general liability) and such other hazards, as is (i) customarily maintained by companies of established repute engaged in the same or similar businesses operating in the same or similar locations and (ii) considered adequate by Holdings and the Parent Borrower and (b) all insurance as may be required by law. Each Loan Party shall, and shall cause each of its subsidiaries to, (A) cause all such

# TAB C

**Court File No. CV-09-8122-00CL**

*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.

# FIRST REPORT TO THE COURT SUBMITTED BY FTI CONSULTING CANADA ULC IN ITS CAPACITY AS MONITOR

## INTRODUCTION

1. On April 3, 2009, Indalex Limited ("**Indalex**"), Indalex Holdings (B.C.) Ltd. ("**Indalex BC**"), 6326765 Canada Inc. ("**632**") and Novar Inc. ("**Novar**") (collectively, the "**Applicants**") made an application under the *Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36,* as amended (the "**CCAA**") and an initial order (the "**Initial Order**") was made by the Honourable Mr. Justice Morawetz granting, *inter alia*, a stay of proceedings against the Applicants until May 1, 2009, (the "**Stay Period**") and appointing FTI Consulting Canada ULC as monitor ("**FTI Canada**" or the "**Monitor**"). The proceedings commenced by the Applicants under the CCAA will be referred to herein as the "**CCAA Proceedings**".

2. Indalex's parent is Indalex Holding Corp. ("**Indalex Holding**"), which is a wholly-owned subsidiary of Indalex Holdings Finance, Inc. ("**Indalex Finance**"). Indalex BC, 632 and Novar are wholly owned subsidiaries of Indalex. Collectively, Indalex Finance and its affiliates (the "**Indalex Group**") is the second largest aluminium extruder in North America.

3. On March 20, 2009, Indalex Holding, Indalex Finance, Indalex Inc., Caradon Lebanon, Inc. and Dolton Aluminum Company, Inc. (collectively, the "**US Debtors**") commenced proceedings (the "**Ch.11 Proceedings**") under chapter 11 of the *United States Bankruptcy Code* (the "**USBC**") in the United States Bankruptcy Court, District of Delaware (the "**US Court**"). The case has been assigned to Judge Walsh.

4. The purpose of this report is to inform the Court on the following:

   (a) The request for approval of debtor-in-possession financing ("**DIP Financing**") pursuant to a credit agreement substantially in the form of the draft credit agreement between, *inter alia*, the Senior Secured Lenders (as hereinafter defined), the US Debtors and the Applicants (the "**DIP Agreement**") and attached as Exhibit C to the April 8 Affidavit, as hereinafter defined;

   (b) The Applicants' request for approval of DIP Financing pursuant to the DIP Agreement and the granting of a charge securing the Applicants' obligations thereunder (the "**DIP Charge**");

   (c) The independent opinion (the "**Security Opinion**") provided to the Monitor by Stikeman Elliott LLP, independent counsel to the Monitor ("**Monitor's Counsel**"), regarding the security of the Senior Secured Lenders;

(d) The Monitor's recommendation in respect of the Applicants' request for approval of the DIP Agreement and the granting of the DIP Charge; and

(e) The Applicants' revised and extended cash flow forecast to June 26, 2009, 2009 (the "**April 7 Forecast**"), prepared on the assumption that the DIP Agreement is approved.

5. In preparing this report, the Monitor has relied upon unaudited financial information of the Applicants, the Applicants' books and records, certain financial information prepared by the Applicants and discussions with the Applicants' management. The Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the information. Accordingly, the Monitor expresses no opinion or other form of assurance on the information contained in this report or relied on in its preparation. Future oriented financial information reported or relied on in preparing this report is based on management's assumptions regarding future events; actual results may vary from forecast and such variations may be material.

6. Unless otherwise stated, all monetary amounts contained herein are expressed in United States Dollars. Capitalized terms not otherwise defined herein have the meanings defined the Initial Order or in the affidavit of Patrick Lawlor, Chief Financial Officer of the Indalex Limited, sworn April 8, 2009, and filed in support of the Applicants' motion (the "**April 8 Affidavit**") or the Pre-Filing Report dated April 3, 2009, filed by FTI Canada in its capacity as proposed Monitor of the Applicants in connection with the Applicants' initial application.

7. This report should be read in conjunction with the April 8 Affidavit as certain information contained in the April 8 Affidavit has not been included herein in order to avoid unnecessary duplication. Copies of the April 8 Affidavit and the Pre-Filing Report will be available on the Monitor's website at http://cfcanada.fticonsulting.com/indalex.

## THE US DEBTORS' REQUEST FOR APPROVAL OF THE DIP AGREEMENT

8. On April 7, 2009, the US Debtors filed a motion for the approval of the DIP Agreement with the US Court. The motion is scheduled to be heard at 3 p.m. Eastern Time on April 8, 2009.

## THE APPLICANTS' REQUEST FOR APPROVAL OF THE DIP AGREEMENT

### THE PRE-FILING FUNDING ARRANGEMENTS

9. The April 8 Affidavit sets out the Applicants' pre-filing funding arrangements pursuant to the Revolving Credit Facility (the lenders thereunder being the "**Senior Secured Lenders**"). As set out therein, prior to March 6, 2009, the indebtedness of the US Debtors (the "**US Primary Indebtedness**") was secured on the assets of the US Debtors and the indebtedness of the Applicants (the "**Canadian Primary Indebtedness**") was secured on the assets of the Applicants. In addition, the US Debtors had provided a secured guarantee of the Canadian Primary Indebtedness. Prior to March 6, 2009, the US Primary Indebtedness was not guaranteed by the Applicants pursuant to the Revolving Credit Facility.

10. As described in paragraphs 18 to 23 of the April 8 Affidavit, on March 6, 2009, the Applicants, among others, entered into the Forbearance Agreement.

### THE APPLICANTS' EFFORTS TO ARRANGE DIP FINANCING

11. In anticipation of the possibility that the Applicants and the US Debtors may have to commence formal restructuring proceedings, the Indalex Group, assisted by its Investment Bankers, Jefferies & Company, Inc. ("**Jefferies**"), undertook efforts to obtain DIP Financing.

12. Given the capital structure of the US Debtors, which includes approximately $306 million of secured debt, Jefferies determined that there was no likelihood of obtaining DIP Financing ranking subordinate to the existing secured lenders. The Monitor concurs with this view.

13. Accordingly, Jefferies approached the following parties that were considered as logical potential candidates to consider providing DIP Financing secured by a priming charge. These groups included:

    (a) The Senior Secured Lenders;

    (b) Sun Indalex LLC ("**Sun Indalex**"), which holds $30 million of secured debt ranking subordinate to the Senior Secured Lenders;

    (c) The ad hoc committee of holders of the Senior Secured Notes (the "**Noteholders**"); and

    (d) Two parties not currently providing financing to the Indalex Group.

14. Sun Indalex, the Noteholders and one of the unconnected parties all declined to provide DIP Financing.

15. The Senior Secured Lenders and one of the unconnected parties ("**Party A**") indicated that they were prepared to consider providing DIP Financing.

16. After lengthy negotiation, both the Senior Secured Lenders and Party A provided term sheets for DIP Financing. Both Party A and the Senior Secured Lenders stated that they would require that the DIP Financing for the US Debtors and the Applicants be secured by Court-ordered charges and be fully cross-guaranteed.

17. On its face, the term sheet provided by Party A provided better pricing terms. However, it was subject to due diligence conditions, giving rise to closing risk. Furthermore, proceeding with Party A would require the Indalex Group to obtain priming charges ranking in priority to the Senior Secured Lenders, and it was anticipated that the Senior Secured Lenders would strenuously object to any priming charge.

18. Indalex Group was advised by Jefferies and its US legal counsel that because of the "adequate assurance" requirements that would need to be met in the Ch.11 Proceedings in order to obtain a priming charge over the objection of the Senior Secured Lenders, obtaining approval of DIP Financing with Party A would take significantly longer than approval of DIP Financing with the Senior Secured Lenders and there could be no assurance that the application for the priming charge would be successful.

19. Given these risks and the likely destabilising effect a drawn out contested US DIP approval process would have on the business, the Indalex Group, in consultation with Jefferies and its legal and professional advisors, concluded that the additional uncertainty and closing risk associated with proceeding with Party A were not justified and elected to proceed with the Senior Secured Lenders.

20. The Monitor believes that the decision reached by the Indalex Group and its advisors to select the Senior Secured Lenders as the party with which to attempt to negotiate DIP Financing was reasonable and justified in the circumstances.

21. The original proposal for DIP Financing by the Senior Secured Lenders provided for additional borrowing availability to fund the liquidity requirements of the US Debtors and the Applicants and the repayment of the pre-filing indebtedness under the Revolving Credit Facility over time through the application of post-filing collections and, in the United States, through advances made under the new DIP Financing facility. The indebtedness of the US Debtors would be secured on the assets of the US Debtors and the indebtedness of the Applicants would be secured on the assets of the Applicants. In addition, the Applicants would provide a secured guarantee of the indebtedness of the US Debtors and the US Debtors would provide a secured guarantee of the indebtedness of the Applicants.

22. In considering whether to support a request for court approval of DIP Financing and a priority DIP charge by an entity filing under the CCAA, the Monitor believes that the following factors are among those that should be considered:

(a) The need for additional financing;

(b) The benefits that may accrue to the stakeholders if the request is approved and the prejudice to those stakeholders if the request is denied;

(c) Any alternatives that may be available;

(d) Any potential prejudice to the creditors of the entity if the request is approved; and

(e) A balancing of the benefits accruing to stakeholders with any potential prejudice to creditors.

23. Given the circumstances surrounding the inclusion of the Canadian Pre-Filing Guarantee in the Forbearance Agreement on March 6, 2009, the Monitor was concerned that any DIP structure securing the Canadian Pre-Filing Guarantee via a court-ordered charge could potentially prejudice Canadian stakeholders by predetermining the issue of the validity and enforceability of the Canadian Pre-Filing Guarantee[1].

24. The Monitor therefore informed the Applicants and the Senior Secured Lenders that it would not support an application for DIP Financing that unconditionally secured the Canadian Pre-Filing Guarantee by way of a Court-ordered charge.

25. The Applicants and the Senior Secured Lenders agreed to address the concerns of the Monitor and, as a result, all parties have worked co-operatively towards a mutually acceptable solution. As a result of these combined efforts, the Applicants, the US Debtors and the Senior Secured Lenders reached an agreement on the structuring of DIP Financing and the related charges as follows:

[1] Nothing in this report should be interpreted or construed as the Monitor intending to express a view as to the validity or invalidity, enforceability or unenforceability of the Canadian Pre-Filing Guarantee

(a) Additional advances will be made to fund the operations of the US Debtors and the Applicants (the "**US Additional Advances**" and the "**Canadian Additional Advances**" respectively);

(b) Following the preliminary approval of the DIP Agreement by the US Court, post-filing collections by the US Debtors will be applied to repay the pre-filing indebtedness of the US Debtors and the balance of the pre-filing indebtedness of the US Debtors will be paid from the DIP Financing once the final order in respect of the DIP Agreement is granted (the "**US Roll-up**");

(c) Post-filing collections by the Applicants will be applied to repay the pre-filing indebtedness of the Applicants (the "**Canadian Roll-up**");

(d) A Court-ordered charge (the "**DIP Charge**") will secure the direct indebtedness of the Applicants against the assets of the Applicants and a similar charge will be granted by the US Court (the "**US Charge**") securing the direct indebtedness of the US Debtors against the assets of the US Debtors;

(e) The US Debtors will guarantee the indebtedness of the Applicants, such guarantee being secured under the US Charge; and

(f) The Applicants will guarantee the indebtedness of the US Debtors, such guarantee being secured by the DIP Charge, provided that if the Canadian Pre-Filing Guarantee of the Applicants is found not to be valid, binding and enforceable or avoidable as against third parties, the amount of the Applicants' guarantee secured by the DIP Charge shall be limited to an amount equal to the amount advanced to the US Debtors under the DIP Financing less the amount by which the US Primary Indebtedness is reduced through collections or deemed payment under the DIP Financing.

26. The intent of this structure is for the Senior Secured Lenders to obtain the benefit of Court-ordered charges securing the DIP Financing and the cross-guarantees of the US Additional Advances and the Canadian Additional Advances while maintaining the status quo vis-à-vis the Canadian Pre-Filing Guarantee.

**THE DIP AGREEMENT**

27. The DIP Agreement is described at paragraphs 29 to 39 of the April 8 Affidavit. In summary the DIP Agreement provides a maximum facility of up to $84.6 million. The Applicants may draw up to $24.36 million, and the US Debtors are able to borrow the balance, in each case subject to margin availability under borrowing base calculations for the Applicants and the US Debtors.

28. As described in the April 8 Affidavit, the DIP Agreement contains a number of milestones in respect of the sale or restructuring of the US Debtors and the Applicants, including a requirement that the Applicant shall have obtained approval from the Court for a sale process within ten business days after the Effective Date (as defined in the DIP Agreement). The Monitor will work with the Applicants, the US Debtors and their advisors to ensure that the sales process ultimately proposed complies with the *Sound Air* principles.

29. Also as described in the April 8 Affidavit, Article VII of the DIP Agreement contains a number of events of default. Included at Article VII(l) is an event of default that shall occur if:

> "the Loan Guaranty shall fail to remain in full force or effect (except as permitted by the Loan Documents) or any action shall be taken to discontinue or to assert the invalidity or unenforceability of the Loan Guaranty (other than any action taken by a third party with respect to the Loan Guaranty by the Canadian Subsidiary Borrower and the Canadian Subsidiary Loan Parties of up to $[•] of Secured Obligations of the Parent Borrower), or any Loan

> Guarantor shall fail to comply with any of the terms or provisions of the Loan Guaranty to which it is a party, or any Loan Guarantor shall deny that it has any further liability under the Loan Guaranty to which it is a party, or shall give notice to such effect"

30. As a result, a successful challenge of the Canadian Pre-Filing Guarantee could potentially be an event of default of the DIP Agreement.

## REVIEW OF SENIOR SECURED LENDERS' SECURITY

31. The Monitor asked its counsel to conduct a security review of the Senior Secured Lenders' security, other than the Canadian Pre-Filing Guarantee. The Monitor has received an opinion from its counsel which states that, subject to the assumptions and qualifications contained therein, the Senior Secured Lenders' security is valid and enforceable and ranks in priority to other claims with respect to accounts and inventory. A copy of the opinion will be provided to the Court and any interested party requesting a copy of same who confirms in advance that: (a) such party is not Stikeman Elliott's client and therefore is not entitled to rely upon the opinion and that Stikeman Elliott has no liability to such party in connection with the provision to such party of the opinion or the contents thereof; (b) such party will not disclose the opinion to any other party; and (c) the provision of the opinion does not constitute a waiver of privilege.

## MONITOR'S RECOMMENDATION IN RESPECT OF THE APPLICANTS' REQUEST FOR APPROVAL OF THE DIP AGREEMENT AND DIP CHARGE

32. The Monitor has considered the Applicants' request for Court approval of the DIP Agreement and the DIP Charge in light of the five factors set out earlier in this report, namely:

(a) The need for additional financing;

(b) The benefits that may accrue to the stakeholders if the request is approved and the prejudice to those stakeholders if the request is denied;

(c) Any alternatives that may be available;

(d) Any potential prejudice to the creditors of the entity if the request is approved; and

(e) A balancing of the benefits accruing to stakeholders with any potential prejudice to creditors.

**THE NEED FOR ADDITIONAL FINANCING**

33. The Applicants are under significant liquidity constraints and additional financing is required in order to maintain going concern operations.

**BENEFITS OF APPROVAL TO STAKEHOLDERS AND PREJUDICE FROM DENIAL**

34. Maintaining business operations is in the interests of all stakeholders as it will afford the Applicants the opportunity to develop a viable restructuring plan designed to maximize the recoveries of all stakeholders. Furthermore, maintaining operations continues the employment of approximately 750 people as well as providing ongoing business for suppliers and customers.

35. If the Applicants' request for approval of the DIP Agreement is denied, the Applicants will be unable to continue operations, most likely resulting in the forced liquidation of the assets to the detriment of creditors, employees, suppliers and customers.

## AVAILABLE ALTERNATIVES

36. The only other source of financing currently available would require additional due diligence and a potentially long and contentious approval process in the US Court, with uncertainty over the outcome. Such a situation would result in significant uncertainty amongst suppliers, employees and customers with a potentially disastrous effect on the business and operations of the Applicants and the US Debtors.

## POTENTIAL PREJUDICE TO CREDITORS

37. Based upon the opinion provided to the Monitor, and subject to the assumptions and qualifications contained therein, the Senior Secured Lenders hold valid and enforceable security over the accounts and receivables of the Applicants which ranks in priority to other creditors. Accordingly, there would appear to be no potential prejudice to other creditors of the Applicants from the Canadian Roll-up.

38. The proposed structuring of the DIP Charge, which is intended to maintain the status quo vis-à-vis the Canadian Pre-Filing Guarantee, is designed to ensure that there is no potential prejudice to creditors of the Applicants ranking subordinate to the Senior Secured Lenders from extending the guarantee to the US Primary Indebtedness.

39. As noted earlier in this report, the only other party currently prepared to provide DIP Financing would require cross-guarantees by both the Applicants and the US Debtors similar to that provided for under the proposed DIP Charge for the US Additional Advances and the Canadian Additional Advances.

40. The US Debtors' current cash flow forecast projects maximum additional borrowings of approximately $2.4 million. Based on the information provided to the Monitor by the US Debtors, it appears that the value of the assets of the US Debtors is far in excess of the current forecast of US Additional Advances. Accordingly, it would appear that the likelihood of a call on the Applicants' guarantee of the US Additional Advances is remote. Furthermore, because the US Debtors ability to borrow is constrained by the borrowing base calculation under the DIP Agreement, even if the US Additional Advances were higher than forecast, additional assets would have to have been generated to support that borrowing and, as a result, the likelihood of a call on the guarantee in that scenario would still appear remote. In order to maintain confidentiality and to avoid prejudicing any future realization efforts, the Monitor has not included details of asset values in this report but will, of course, make them available to the Court under suitable terms of confidentiality if so requested.

## THE BALANCING OF BENEFITS AND POTENTIAL PREJUDICES

41. In the Monitor's view, the approval of the DIP Agreement and the proposed structuring of the DIP Charge provide appropriate protection for the DIP Lenders and appropriately balances the benefits to stakeholders that will accrue from such approval with the need to protect the interests of the Canadian creditors against any potential prejudice.

## RECOMMENDATION OF THE MONITOR

42. Predicated on the assumption that the DIP Agreement is executed in substantially the form reviewed by the Monitor, the Monitor is of the view that approval of the DIP Agreement is in the best interests of the Applicants and their stakeholders and that no creditor will be materially prejudiced by approval of the DIP Agreement and the granting of the DIP Charge as proposed. Accordingly, the Monitor respectfully recommends that the Applicants' request for approval of the DIP Agreement and the granting of the DIP Charge be approved.

**REVISED AND EXTENDED CASH FLOW FORECAST TO JUNE 26, 2009**

43. The April 7 Forecast is attached hereto as Appendix A. The only significant change in the underlying assumptions in the April 7 Forecast as compared to the cash flow forecast filed by the Applicants in conjunction with the initial application is the approval of the DIP Agreement.

The Monitor respectfully submits to the Court this, its First Report.

Dated this 8th day of April, 2009.

FTI Consulting Canada ULC
In its capacity as Monitor of
Indalex Limited, Indalex Holdings (B.C.) Ltd.,
6326765 Canada Inc. and Novar Inc.

Nigel D. Meakin
Senior Managing Director

# TAB D

2009 CarswellOnt 1998, 52 C.B.R. (5th) 61

C

2009 CarswellOnt 1998, 52 C.B.R. (5th) 61

Indalex Ltd., 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)

Ontario Superior Court of Justice [Commercial List]

Morawetz J.

Heard: April 8, 2009
Judgment: April 8, 2009
Docket: CV-09-8122-00CL



Counsel: Linc Rogers, Katherine McEachern for Applicants

Wael Rostom for JPMorgan Chase Bank (N.A.) as Pre-petition Agent, DIP Agent for Proposed DIP Lenders

Ashley Taylor for FTI Consulting Canada ULC, Monitor

Subject: Insolvency

Bankruptcy and insolvency --- Proposal — Companies' Creditors Arrangement Act — Arrangements — Approval by court — Miscellaneous issues

I Ltd. was involved in Companies' Creditors Arrangement Act proceedings — I Ltd. brought motion for approval of Debtor-In-Possession ("DIP") financing, pursuant to credit agreement with its US parent and its affiliates, and for post-filing guarantee — Motion granted — DIP financing was required — Structure of DIP credit agreement was reasonable — Modifications proposed were appropriate.

**Cases considered by *Morawetz J.*:**

*A & M Cookie Co. Canada, Re* (2008), 49 C.B.R. (5th) 188, 2008 CarswellOnt 7136 (Ont. S.C.J. [Commercial List]) — followed

*InterTAN Canada Ltd., Re* (2008), 49 C.B.R. (5th) 248, 2008 CarswellOnt 8040 (Ont. S.C.J. [Commercial List]) — followed

*Intertan Canada Ltd., Re* (2009), 49 C.B.R. (5th) 232, 2009 CarswellOnt 324 (Ont. S.C.J. [Commercial List]) — referred to

*Pliant Corp. of Canada Ltd., Re* (March 24, 2009), Doc. 09-CL-8007 (Ont. S.C.J.) — followed

*Smurfit-Stone Container Inc., Re* (2009), 50 C.B.R. (5th) 71, 2009 CarswellOnt 391 (Ont. S.C.J. [Commercial List]) — followed

**Statutes considered:**

*Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36

Generally — referred to

MOTION by company involved in Companies' Creditors Arrangement Act proceedings for approval of debtor-in-possession financing and for post-filing guarantee.

***Morawetz J.* (Orally):**

1 On April 8, 2009, the record was endorsed as follows: "Order granted in the form presented, as amended. Brief reasons will follow." These are those reasons.

2 The Applicants brought this motion for:

> (i) the approval of debtor-in-possession financing ("DIP Financing") pursuant to a Credit Agreement (the "DIP Credit Agreement") among the Applicants, their U.S. parent and its affiliates (collectively, ("Indalex U.S.") and together with the Applicants, (collectively, the "Indalex Group")) and JPMorgan Chase Bank (N.A.) ("JPMorgan"), in its capacity as Administrative Agent for the Lenders (collectively, the "DIP Lenders") and
>
> (ii) the approval of a secured guarantee granted by the Applicants in favour of the DIP Lenders, guaranteeing the obligations of Indalex U.S. under the DIP Credit Agreement (the "Post-Filing Guarantee").

3 Counsel to the Applicants submits that the purpose of these CCAA proceedings is to preserve value for a broad cross-section of stakeholders of the Applicants including their employees, customers, business partners, suppliers and secured and other creditors and that in order to accomplish this goal, the Applicants need stable and reliable access to DIP Financing. Counsel further submits that one of the pre-conditions to obtaining such financing is that the Applicants provide a guarantee (the "Post-Filing Guarantee") of the obligations of Indalex U.S. Indalex U.S. is currently subject to Chapter 11 proceedings.

4 Counsel to the Applicants further submits that the authorization of DIP Financing and the Post-Filing Guarantee is reasonable, appropriate and justified in the circumstances and that DIP Financing is necessary to preserve the opportunity to seek a viable growing concern solution and that sufficient safeguards are in place to protect the pre-filing collateral position of the Applicants' unsecured creditors and any potential prejudice in connection with the granting of the Post-Filing Guarantee is substantially outweighed by the potential benefit to stakeholders, derived from the DIP Financing.

5 The relevant facts, in support of the requested relief, are set out at paragraph 4 of the factum submitted by counsel to the Applicants.

6 The record has established, in my view, that DIP financing is required. However, prior to approving the DIP Financing pursuant to the DIP Credit Agreement, it is necessary to consider a number of factors which include the benefit the Applicants will receive from the DIP Facility and the collateral that is charged to secure the DIP Facility. See *Intertan Canada Ltd., Re* (2009), 49 C.B.R. (5th) 232 (Ont. S.C.J. [Commercial List]). In this case, the proposed collateral being provided to the DIP Lenders includes a secured guarantee of the Applicants in favour of the DIP Lenders, guaranteeing the obligations of Indalex U.S. under the DIP Credit Agreement.

7 The situation in which proposed DIP financing has been conditional on a guarantee by the Canadian debtor of the U.S. debtors' obligations has recently been considered by this court in *A & M Cookie Co. Canada, Re* (2008), 49 C.B.R. (5th) 188 (Ont. S.C.J. [Commercial List]), *InterTAN Canada Ltd., Re* (2008), 49 C.B.R. (5th) 248 (Ont. S.C.J. [Commercial List]), *Smurfit-Stone Container Inc., Re*, (January 27, 2009, CV-09-7966-00CL), [2009 CarswellOnt 391 (Ont. S.C.J. [Commercial List])] and *Pliant Corp. of Canada Ltd., Re* (March 24, 2009), Doc. 09-CL-8007 (Ont. S.C.J.).

8 These cases have established that the following factors are relevant in determining the appropriateness of authorizing a guarantee in connection with a DIP facility:

(a) the need for additional financing by the Canadian debtor to support a going concern restructuring;

(b) the benefit of the breathing space afforded by CCAA protection;

(c) the availability (or lack thereof) of any financing alternatives, including the availability of alternative terms to those proposed by the DIP lender;

(d) the practicality of establishing a stand-alone solution for the Canadian debtors;

(e) the contingent nature of the liability of the proposed guarantee and the likelihood that it will be called on;

(f) any potential prejudice to the creditors of the entity if the request is approved, including whether unsecured creditors are put in any worse position by the provision of a cross-guarantee of a foreign affiliate than as existed prior to the filing, apart from the impact of the super-priority status of new advances to the debtor under the DIP financing;

(g) the benefits that may accrue to the stakeholders if the request is approved and the prejudice to those stakeholders if the request is denied; and

(h) a balancing of the benefits accruing to stakeholders generally against any potential prejudice to creditors.

9 In this case, I am satisfied that the Applicants have established the following:

(a) the Applicants are in need of the additional financing in order to support operations during the period of a going concern restructuring;

(b) there is a benefit to the breathing space that would be afforded by the DIP Financing that will permit the Applicants to identify a going concern solution;

(c) there is no other alternative available to the Applicants for a going concern solution;

(d) a stand-alone solution is impractical given the integrated nature of the business of Indalex Canada and Indalex U.S.;

(e) given the collateral base of Indalex U.S., the Monitor is satisfied that it is unlikely that the Post-Filing Guarantee with respect to the U.S. Additional Advances will ever be called and the Monitor is also satisfied that the benefits to stakeholders far outweighs the risk associated with this aspect of the Post-Filing Guarantee;

(f) the benefit to stakeholders and creditors of the DIP Financing outweighs any potential prejudice to unsecured creditors that may arise as a result of the granting of super-priority secured financing against the assets of the Applicants;

(g) the Pre-Filing Security has been reviewed by counsel to the Monitor and it appears that the unsecured creditors of the Canadian debtors will be in no worse position as a result of the Post-Filing Guarantee than they were otherwise, prior to the CCAA filing, as a result of the limitation of the Canadian guarantee set forth in the draft Amended and Restated Initial Order (see [10] and [11] below); and

(h) the balancing of the prejudice weighs in favour of the approval of the DIP Financing.

10 The Monitor also filed a report in respect of the motion. The Monitor indicated that it was concerned that any DIP structure securing the Canadian Pre-Filing Guarantee via court-ordered charge could potentially prejudice Canadian stakeholders by pre-determining the issue of the validity and enforceability of the Canadian Pre-Filing Guarantee. As a result of the concerns raised by the Monitor, the Applicants and the Senior Secured Creditors addressed the situation, the details of which are set out at paragraph 25 of the Monitor's First Report.

11 As stated at paragraph 26 of the Monitor's Report, the intent of the structure is for the Senior Secured Lenders to obtain the benefit of Court-ordered charges securing the DIP Financing and the cross-guarantees of the U.S. Additional Advances and the Canadian Additional Advances while maintaining the *status quo* vis-à-vis the Canadian Pre-Filing Guarantee.

12 The Monitor's Report also summarizes the DIP Credit Agreement. The DIP Credit Agreement provides a maximum facility of up to $84.6 million and the Applicants may draw up to $24.36 million, and the U.S. Debtors are able to borrow the balance, in each case subject to margin availability under borrowing-based calculations for the Applicants and the U.S. Debtors.

13 Counsel to the Monitor has reviewed the security of the Senior Secured Lenders, other than the Canadian Pre-Filing Guarantee and has provided an opinion to the Monitor which states that, subject to the assumptions and qualifications contained therein, the Senior Secured Lenders' security is valid and enforceable and ranks in priority to other claims with respect to accounts and inventory.

14 The Monitor has also referenced that maintaining business operations is in the interests of all stakeholders as it will afford the Applicants the opportunity to develop a viable restructuring plan designed to maximize recoveries for all stakeholders and furthermore, maintaining operations continues the employment of approximately 750 people as well as providing ongoing business for suppliers and customers. The Monitor has also reported that if the Applicants' request for approval of the DIP Agreement was to be denied, the Applicants would be unable to continue operations, both likely resulting in the forced liquidation of the assets to the detriment of creditors, employees, suppliers and customers.

15 The Monitor also considered the potential prejudice to creditors and reports that the likelihood of a call on the Applicants' guarantee of the U.S. Additional Advances is unlikely and that the approval of the DIP Agreement and the

proposed structuring of the DIP Charge provide appropriate protection for the DIP Lenders and appropriately balances the benefits to stakeholders that will accrue from such approval with the need to protect the interests of the Canadian creditors against any potential prejudice.

16 The Monitor concludes its Report by noting that it is of the view that approval of the DIP Agreement is in the best interests of the Applicants and their stakeholders and recommends approval of the DIP Agreement and the granting of the DIP Charge.

17 I am satisfied that the Applicants have established that the granting of DIP Financing is necessary and that the structure of the DIP Credit Agreement is reasonable in the circumstances. DIP Financing pursuant to DIP Credit Agreement is accordingly approved.

18 The proposed Amended and Restated Order also provides for certain restructuring powers and an agreed upon priority as between the Directors' Charge, the Administrative Charge and the DIP Lenders' Charge. In my view, these modifications are appropriate and are approved.

19 An order shall issue in the form presented, as amended, which order I have signed.

*Motion granted.*

END OF DOCUMENT

# TAB E

Court File No. CV-09-8122-00CL

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

| | | |
|---|---|---|
| THE HONOURABLE MR. | ) | WEDNESDAY, THE |
| | ) | |
| JUSTICE MORAWETZ | ) | 8th DAY OF APRIL, 2009 |

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF INDALEX LIMITED, INDALEX HOLDINGS (B.C.) LTD., 6326765 CANADA INC. and NOVAR INC. (the "Applicants")

**AMENDED AND RESTATED INITIAL ORDER**

THIS APPLICATION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day at 330 University Avenue, Toronto, Ontario.

WHEREAS AN INITIAL ORDER in this matter has been issued on April 3, 2009, which order is hereby Amended and Restated

ON READING the affidavit of Timothy R.J. Stubbs sworn April 3, 2009 and the Exhibits thereto, the supplemental affidavit of Patrick Lawlor sworn April 8, 2009 and the Exhibits thereto, (the "Supplemental Affidavit") the pre-filing report of FTI Consulting Canada ULC ("FTI Canada" or the "Monitor") in its capacity as proposed Monitor and the First Report of the Monitor for the Applicants, and on hearing the submissions of counsel for the Applicants, counsel for the Monitor, and counsel for the DIP Agent, JPMorgan Chase Bank, N.A. ("JPM") under the Prepetition Credit Agreement (in such capacity, the "Prepetition Agent") and as

administrative agent for the proposed DIP Lenders (in such capacity, the "DIP Agent"), and on reading the consent of FTI Canada to act as the Monitor,

**SERVICE**

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged so that this Application is properly returnable today and hereby dispenses with further service thereof.

**APPLICATION**

2. THIS COURT ORDERS AND DECLARES that the Applicants are companies to which the CCAA applies.

**PLAN OF ARRANGEMENT**

3. THIS COURT ORDERS that the Applicants shall have the authority to file and may, subject to further order of this Court, file with this Court one or more plans of compromise or arrangement with respect to one or more of the Applicants (hereinafter referred to as the "Plan") between, *inter alia*, the Applicants and one or more classes of their secured and/or unsecured creditors as they deem appropriate.

**POSSESSION OF PROPERTY AND OPERATIONS**

4. THIS COURT ORDERS that the Applicants shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "Property"). Subject to further Order of this Court, the Applicants shall continue to carry on business in a manner consistent with the preservation of their businesses (the "Business") and Property. The Applicants shall be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "Assistants") currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. THIS COURT ORDERS that the Applicants are authorized and directed to remit to the DIP Agent immediately upon the Applicants' receipt thereof or otherwise in accordance with the Applicants' current practices all cash, monies and collection of account receivables and other book debts (collectively, "**Cash Collateral**") in its possession or control and all Cash Collateral so remitted shall be applied in accordance with the DIP Documents. The DIP Agent is hereby authorized, as of the Effective Date (as defined in the DIP Credit Agreement, as defined below), to (i) send a notice to each Receivables Account Bank (as defined in the Canadian Security Agreement referred to in the DIP Credit Agreement) to commence a period during which the applicable Receivables Account Bank shall cease complying with any instructions originated by any applicable Applicant and shall comply with instructions originated by the DIP Agent directing dispositions of funds, without further consent of the applicable Applicant, and (ii) apply (and allocate) the funds in each Receivables Account (as defined in the Canadian Security Agreement referred to in the DIP Credit Agreement) pursuant to sections 2.09(d) of the DIP Credit Agreement without further order or approval of this Court. Each Receivables Account Bank is hereby authorized to comply with any instructions originated by the DIP Agent on or after the Effective Date directing disposition of funds, without further consent of the applicable Applicant or further order or approval of this Court, and is further authorized to comply with any instructions delivered by the DIP Agent or JPM in its capacity as Prepetition Agent under that certain Credit Agreement among, *inter alia*, the Applicants, dated May 21, 2008 as amended from time to time (the "Prepetition Credit Agreement") to such Receivables Account Bank prior to the Effective Date directing disposition of funds, without further consent of the applicable Applicant or further order or approval of this Court. As of the Effective Date, each "Deposit Account Control Agreement" and "Receivables Account Control Agreement" (as each such term is defined in the Domestic Security Agreement or the Canadian Security Agreement referred to in the Prepetition Credit Agreement) will continue and remain in full force and effect, in each case substituting the Prepetition Agent as the secured party thereunder with the DIP Agent. The Applicants shall maintain their cash management and accounts receivable collection system (the "Cash Management System") in existence prior to the date of this Order, including the Collateral Accounts (as defined below) associated therewith. Each Receivable Account Bank shall not be under any obligation whatsoever to inquire into the propriety validity, or legality of any transfer, payment, collection, or other action taken under this paragraph, or as to the use or application by

the Applicants of funds transferred, paid, collected, or otherwise dealt with in accordance with this paragraph, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicants, pursuant to the terms of this paragraph or any documentation applicable to the Cash Management System, and shall be, in its capacity as a Receivable Account Bank, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

6. [RESERVED]

7. THIS COURT ORDERS that subject to the terms of the DIP Documents (as defined below), the Applicants shall be entitled to but not required to pay the following expenses whether incurred prior to or after this Order:

(a) all outstanding and future wages and salaries (for greater certainty wages and salaries shall not include severance or termination pay), employee and pension benefits, current service contributions to pension plans (which for greater certainty shall not include special payments) vacation pay, bonuses and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and

(b) the fees and disbursements of any Assistants retained or employed by the Applicants in respect of these proceedings, at their standard rates and charges;

8. THIS COURT ORDERS that, except as otherwise provided to the contrary herein and pursuant to the terms and conditions of the DIP Documents, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course after the date of this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

(a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services;

(b) payment for goods or services actually supplied to the Applicants following the date of this Order; and

(c) with the consent of the Monitor, in consultation with the DIP Lenders or their financial advisors, costs and expenses incurred prior to the date of this Order, up to the maximum amount approved by the DIP Lenders pursuant to the DIP Credit Agreement, where in the opinion of the Applicants and the Monitor such payments (i) are necessary to preserve the Property, Business and/or ongoing operations of the Applicants and (ii) can be made on such terms and conditions as will provide a material benefit to the Applicants and their stakeholders as a whole.

9. THIS COURT ORDERS that the Applicants shall remit, in accordance with legal requirements, or pay:

(a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;

(b) current service ("normal cost") contributions to pension plans when due (which, for greater certainty, shall not included special payments);

(c) all goods and services or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order; and

(d) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured

creditors and which are attributable to or in respect of the carrying on of the Business by the Applicants.

10. THIS COURT ORDERS that until such time as an Applicant delivers a notice in writing to repudiate a real property lease in accordance with paragraph 12(c) of this Order (a "Notice of Repudiation"), the Applicant shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Applicant and the landlord from time to time ("Rent"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any arrears relating to the period commencing from and including the date of this Order shall also be paid. Upon delivery of a Notice of Repudiation, the Applicant shall pay all Rent due for the notice period stipulated in paragraph 12(c) of this Order, to the extent that Rent for such period has not already been paid.

11. THIS COURT ORDERS that, except as specifically permitted herein and the DIP Documents or with the consent of the Monitor and the DIP Agent, the Applicants are hereby directed, until further Order of this Court:

(a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants to any of their creditors as of this date; provided, however, that the Applicants shall make all such payments under the Prepetition Credit Agreement as required pursuant to the terms of the DIP Documents and contemplated in the Applicants' cash flow projections and budget approved by the DIP Agent;

(b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of the Property; and

(c) to not grant credit or incur liabilities except in the ordinary course of the Business.

## RESTRUCTURING

12. THIS COURT ORDERS that the Applicants shall, subject to such covenants as may be contained in the DIP Documents (as hereinafter defined), have the right to:

(a) with the consent of the Monitor and the DIP Agent, permanently or temporarily cease, downsize or shut down any of its business or operations and to dispose of redundant or non-material assets not exceeding $250,000 in any one transaction or $1,000,000 in the aggregate, subject to paragraph 12(c) if applicable;

(b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate on such terms as may be agreed upon between the Applicant and such employee, or failing such agreement, to deal with the consequences thereof in the Plan;

(c) in accordance with paragraphs 13 and 14, vacate, abandon or quit the whole but not part of any leased premises and/or repudiate any real property lease and any ancillary agreements relating to any leased premises, on not less than seven (7) days notice in writing to the relevant landlord on such terms as may be agreed upon between the Applicant and such landlord, or failing such agreement, to deal with the consequences thereof in the Plan;

(d) repudiate such of its arrangements or agreements of any nature whatsoever, whether oral or written, other than collective agreements, as the Applicant deems appropriate on such terms as may be agreed upon between the Applicant and such counter-parties, or failing such agreement, to deal with the consequences thereof in the Plan; and

(e) pursue all avenues of refinancing and offers for material parts of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing or any sale (except as permitted by subparagraph (a), above),

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

13. THIS COURT ORDERS that each Applicant shall provide each of the relevant landlords with notice of the Applicant's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicant's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicant, or by further Order of this Court upon application by the Applicant on at least two (2) days notice to such landlord and any such secured creditors. If the Applicant repudiates the lease governing such leased premises in accordance with paragraph 12(c) of this Order, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in paragraph 12(c) of this Order), and the repudiation of the lease shall be without prejudice to the Applicant's claim to the fixtures in dispute.

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

**NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY**

15. THIS COURT ORDERS that until and including May 1, 2009, or such later date as this Court may order (the "Stay Period"), no proceeding or enforcement process in any court or tribunal (each, a "Proceeding") shall be commenced or continued against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, except with the written

consent of the applicable Applicant, the Monitor and the DIP Agent, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

**NO EXERCISE OF RIGHTS OR REMEDIES**

16. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "Persons" and each being a "Person") against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the applicable Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall (a) empower the Applicants to carry on any business which the Applicants are not lawfully entitled to carry on, (b) exempt the Applicants from compliance with statutory or regulatory provisions relating to health, safety or the environment, (c) prevent the filing of any registration to preserve or perfect a security interest, or (d) prevent the registration of a claim for lien.

**NO INTERFERENCE WITH RIGHTS**

17. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicants, except with the written consent of the relevant Applicant and the Monitor, or leave of this Court.

**CONTINUATION OF SERVICES**

18. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with an Applicant or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, employee benefits, transportation, services, utility or other services to the Business or an Applicant (including, where a notice of termination may have been given with an effective date after the date of this Order), are hereby restrained until further Order of this Court from discontinuing, altering,

interfering with or terminating the supply of such goods or services as may be required by an Applicant, and that the Applicants shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicants in accordance with normal payment practices of the Applicants or such other practices as may be agreed upon by the supplier or service provider and each of the Applicants and the Monitor, or as may be ordered by this Court.

**NON-DEROGATION OF RIGHTS**

19. THIS COURT ORDERS that, notwithstanding anything else contained herein, no creditor of the Applicants shall be under any obligation after the making of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

**PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

20. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.5(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of an Applicant with respect to any claim against the directors or officers that arose before or after the date hereof and that relates to any obligations of the Applicant whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicant, if one is filed in respect of the Applicant, is sanctioned by this Court or is refused by the relevant creditors or this Court.

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

21. THIS COURT ORDERS that the Applicants shall indemnify their respective directors and officers from all claims, costs, charges and expenses relating to the failure of the Applicants, after the date hereof, to make payments of the nature referred to in subparagraphs 7(a), 9(a), 9(b), 9(c) and 9(d) of this Order which they sustain or incur by reason of or in relation to their respective capacities as directors and/or officers of the Applicants except to the extent that, with

respect to any officer or director, such officer or director has actively participated in the breach of any related fiduciary duties or has been grossly negligent or guilty of wilful misconduct.

22. THIS COURT ORDERS that the directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "Directors' Charge") on the Property, which charge shall not exceed an aggregate amount of U.S.$3,300,000, as security for the indemnity provided in paragraph 21 of this Order. The Directors' Charge shall have the priority set out in paragraphs 42 and 45 herein.

23. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicants' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 21 of this Order, or the insurer fails to fund defence costs on a timely basis; provided, however, any defence costs paid in respect of the same claim by the insurer shall first be used to reimburse the amounts paid under this paragraph to fund such costs.

**APPOINTMENT OF MONITOR**

24. THIS COURT ORDERS that FTI Canada is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the Property and the Applicants' conduct of the Business with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their respective shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations.

25. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

(a) monitor the Applicants' receipts and disbursements;

(b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;

(c) assist the Applicants, to the extent required by the Applicants, in their dissemination, to the DIP Agent and its counsel on a periodic basis of financial and other information as agreed to between the Applicants and the DIP Agent which may be used in these proceedings including reporting on a basis to be agreed with the DIP Agent;

(d) advise the Applicants in their preparation of the Applicants' cash flow statements and any reporting required by the DIP Agent, which information shall be reviewed with the Monitor and delivered to the DIP Agent and its counsel on a periodic basis, as agreed to by the DIP Agent;

(e) advise the Applicants in their development of any one or more Plans and any amendments to such Plan or Plans;

(f) assist the Applicants, to the extent required by the Applicants, with the holding and administering of creditors' or shareholders' meetings for voting on any Plan or Plans;

(g) have full and complete access to the books, records and management, employees and advisors of the Applicants and to the Business and the Property to the extent required to perform its duties arising under this Order;

(h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order, including being at liberty to retain and utilize the services of entities related to the Monitor as may be necessary to perform its duties hereunder;

(i) be at liberty to act as a Foreign Representative in any foreign proceedings in respect of the Applicants;

(j) consider, and if deemed advisable by the Monitor, prepare a report and assessment on the Plan;

(k) advise and assist the Applicants, as requested in its negotiations with suppliers, customers, creditors and other stakeholders; and

(l) perform such other duties as are required by this Order or by this Court from time to time.

26. THIS COURT ORDERS that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

27. THIS COURT ORDERS that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the Ontario *Environmental Protection Act*, the *Ontario Water Resources Act*, or the Ontario *Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

28. THIS COURT ORDERS that the Monitor shall provide the DIP Agent and any other creditor of an Applicant with information provided by the Applicant in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor

shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by an Applicant is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the relevant Applicant may agree.

29. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

30. THIS COURT ORDERS that the Monitor, counsel to the Monitor, counsel to the Applicants and counsel for the Applicants' directors and officers shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicants on a weekly basis and, in addition, the Applicants are hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Applicants, retainers in the amounts of $50,000, each, respectively, and a retainer to counsel for the Applicants' directors and officers in the amount of $20,000, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

31. THIS COURT ORDERS that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

32. THIS COURT ORDERS that the Monitor, counsel to the Monitor, the Applicants' counsel and counsel for the Applicants' directors and officers shall be entitled to the benefit of and are hereby granted a charge (the "Administration Charge") on the Property, which charge shall not exceed an aggregate amount of U.S.$500,000 as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both

before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 42and 45 hereof.

**DIP FINANCING**

33. THIS COURT ORDERS that the Canadian Subsidiary Borrower (as defined in the DIP Credit Agreement) is hereby authorized and empowered to obtain, borrow and repay under a credit facility pursuant to an agreement, substantially in the form of Exhibit "D" to the Supplemental Affidavit (subject to such non-material amendments thereto as may be consented to in advance to the Monitor) (the "DIP Credit Agreement") among the Applicants, Indalex Holdings Finance, Inc., Indalex Holding Corp., the non-Applicant affiliates party thereto, the lenders party thereto (the "DIP Lenders") and the DIP Agent as administrative agent for the purposes set out in the DIP Credit Agreement provided that the aggregate principal amount of the borrowings by the Applicants under such credit facility outstanding at any time shall not exceed a sub-facility in the amount of U.S. $24,360,000 and shall be made in accordance with the terms of the DIP Loan Documents.

34. THIS COURT ORDERS that the Applicants other than Indalex Limited are hereby authorized and empowered to guarantee to and in favour of the DIP Agent and the DIP Lenders the Canadian Obligations under the DIP Credit Agreement (as those are defined in the DIP Credit Agreement).

35. THIS COURT ORDERS that Indalex Limited is hereby authorized and empowered to guarantee to and in favour of the DIP Agent and the DIP Lenders the Loan Parties' Banking Services Obligations (as defined in the DIP Credit Agreement).

36. THIS COURT ORDERS that the Applicants are hereby authorized and empowered to guarantee to and in favour of the DIP Agent and the DIP Lenders the U.S. Obligations under the DIP Credit Agreement (as those are defined in the DIP Credit Agreement).

37. THIS COURT ORDERS that notwithstanding paragraph 36, the guarantee by the Applicants of the U.S. Obligations under the DIP Credit Agreement in an amount equal to the amount of any reduction of the U.S. Revolving Exposure (as defined in the Prepetition Credit Agreement) after the Effective Date shall not be enforceable only to the extent that this Court

issues an order declaring that any guarantee given by the Applicants and any security granted by the Applicants related to such guarantee in respect of the U.S. Obligations under the Prepetition Credit Agreement is voidable or not valid, not binding or not enforceable, provided, however, that the guarantee granted by the Applicants under the DIP Credit Agreement as to all other amounts constituting U.S. Obligations under the DIP Credit Agreement is hereby deemed to be fully enforceable as against the Applicants and third parties, including any trustee in bankruptcy appointed in respect of any of the Applicants.

38. THIS COURT ORDERS that the Applicants are hereby authorized and empowered to execute and deliver the DIP Credit Agreement and such commitment letters, fee letters, credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "DIP Documents"), as are contemplated by the DIP Credit Documents or as may be reasonably required by the DIP Agent and the DIP Lenders pursuant to the terms thereof, and subject to paragraph 33, the Applicants are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities and obligations to the DIP Lenders and the DIP Agent under and pursuant to the DIP Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

39. THIS COURT ORDERS that the DIP Agent and the DIP Lenders shall be entitled to the benefit of and is hereby granted a charge (the "DIP Lenders Charge") on the Property, which charge shall not exceed the aggregate amount owed to the DIP Lenders under the DIP Documents. The DIP Lenders Charge shall have the priority set out in paragraphs 42 and 45 hereof.

40. THIS COURT ORDERS that, notwithstanding any other provision of this Order, but subject to paragraph 33:

(a) the DIP Agent and the DIP Lenders may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Agent and the DIP Lenders Charge or any of the DIP Documents;

(b) upon the occurrence of an event of default under the DIP Documents or the DIP Lenders Charge, the DIP Agent, on behalf of the DIP Lenders, upon three business

days notice to the Applicants and the Monitor, may exercise any and all of its rights and remedies against the Applicants or the Property under or pursuant to DIP Documents and the DIP Lenders Charge, including without limitation, to cease making advances to the Applicants and set off and/or consolidate any amounts owing by the DIP Lenders to the Applicants against the obligations of the Applicants to the DIP Lenders under the DIP Documents or the DIP Lenders Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for bankruptcy orders against the Applicants and for the appointment of a trustee in bankruptcy of the Applicants, and upon the occurrence of an event of default under the terms of the DIP Documents, the DIP Lenders, upon three business days notice to the Applicants and the Monitor, shall be entitled to seize and retain proceeds from the sale of the Property and the cash flow of the Applicants to repay amounts owing to the DIP Lenders in accordance with the DIP Documents and the DIP Lenders Charge, but subject to the priorities as set out in paragraphs 42 and 45 of this Order; and

(c) the foregoing rights and remedies of the DIP Agent and the DIP Lenders shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicants or the Property.

41. THIS COURT ORDERS AND DECLARES that, unless otherwise agreed, the DIP Agent and the DIP Lenders shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicants under the CCAA, or any proposal filed by the Applicants under the *Bankruptcy and Insolvency Act* of Canada (the "BIA"), with respect to any advances made under the DIP Documents.

**VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

42. THIS COURT ORDERS that the priorities of the Administration Charge, the Directors' Charge and the DIP Lenders Charge, as among them, shall be as follows:

First – Administration Charge;

Second – Directors' Charge (up to a maximum amount of U.S.$1.0 million);

Third – DIP Lenders Charge; and

Fourth – Directors Charge (for the balance thereof, being U.S.$2.3 million).

43. THIS COURT ORDERS that any distribution in respect of the DIP Lenders Charge as amongst the beneficiaries thereto shall be governed by the DIP Documents.

44. THIS COURT ORDERS that the filing, registration or perfection of the Administration Charge, the Directors' Charge or the DIP Lenders Charge (collectively, the "Charges") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

45. THIS COURT ORDERS that each of the Administration Charge, the Directors' Charge and the DIP Lenders Charge (all as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, statutory or otherwise (collectively, "Encumbrances") in favour of any Person.

46. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Directors' Charge the Administration Charge or the DIP Lenders Charge, unless the Applicants also obtain the prior written consent of the Monitor, the DIP Agent and the beneficiaries of the Directors' Charge and the Administration Charge, or further Order of this Court.

47. THIS COURT ORDERS that subject to paragraph 37, the Directors' Charge, the Administration Charge, the DIP Documents and the DIP Lenders Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "Chargees") and/or the DIP Lenders thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any

assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "Agreement") which binds the Applicants, or any of them, and notwithstanding any provision to the contrary in any Agreement:

(a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the DIP Documents shall create or be deemed to constitute a breach by any of the Applicants of any Agreement to which it is a party;

(b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicants entering into the DIP Credit Agreement, the creation of the Charges, or the execution, delivery or performance of the DIP Documents; and

(c) the payments made by the Applicants pursuant to this Order or the DIP Documents, and the granting of the Charges, do not and will not constitute fraudulent preferences, fraudulent conveyances, oppressive conduct, settlements or other challengeable, voidable or reviewable transactions under any applicable law.

48. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the relevant Applicant's interest in such real property leases.

**SERVICE AND NOTICE**

49. THIS COURT ORDERS that the Applicants shall, within ten (10) business days of the date of entry of this Order, send notice of this Order to their known creditors, other than employees and creditors to which the Applicants owe less than $5000, at their addresses as they appear on the Applicants' records, advising that such creditor may obtain a copy of this Order on the internet at the website of the Monitor, http://cfcanada.fticonsulting.com/indalex (the "Website") and, if such creditor is unable to obtain it by that means, such creditor may obtain a copy from the Monitor. The Monitor shall promptly send a copy of this Order to any interested

Person requesting a copy of this Order, and the Monitor is relieved of its obligation under Section 11(5) of the CCAA to provide similar notice, other than to supervise this process.

50. THIS COURT ORDERS that the Applicants and the Monitor be at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Applicants' creditors or other interested parties at their respective addresses as last shown on the records of the Applicants and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

51. THIS COURT ORDERS that the Applicants, the Monitor, and any party who has filed a Notice of Appearance may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, in accordance with the E-filing protocol of the Commercial List to the extent practicable, and the Monitor may post a copy of any or all such materials on the Website.

**GENERAL**

52. THIS COURT ORDERS that the Applicants or the Monitor may from time to time apply to this Court for advice and directions in the discharge of their powers and duties hereunder.

53. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicants, the Business or the Property.

54. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding,

or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

55. THIS COURT ORDERS that each of the Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

56. THIS COURT ORDERS that any interested party (including the Applicants and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order; provided however, the DIP Agent and the DIP Lenders shall be entitled to rely on this Order as issued for all advances made under the DIP Credit Agreement up to and including the date this Order may be varied or amended.

57. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Daylight Time on the date of this Order.

ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

APR 0 9 2009

PER / PAR: TY

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

Court File No. CV-09-8122-00CL

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)

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

Proceeding commenced at Toronto

**AMENDED AND RESTATED INITIAL ORDER**


**BLAKE, CASSELS & GRAYDON LLP**
Barristers and Solicitors
199 Bay Street, Suite 2800
Box 25, Commerce Court West
Toronto, Ontario M5L 1A9

**Linc Rogers** LSUC No.: 43562N
Tel: (416) 863-4168

**Katherine McEachern** LSUC No.: 38345M
Tel: (416) 863-2566
Fax: (416) 863-2653

**Jackie Moher** LSUC No.: 53166V
Tel: (416) 863-3174
Fax: (416) 863-2653

Lawyers for the Applicants


000367

# TAB F

**Court File No. CV-09-8122-00CL**

*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.

# FOURTH REPORT TO THE COURT SUBMITTED BY FTI CONSULTING CANADA ULC IN ITS CAPACITY AS MONITOR

## INTRODUCTION

1. On April 3, 2009, Indalex Limited ("**Indalex**"), Indalex Holdings (B.C.) Ltd. ("**Indalex BC**"), 6326765 Canada Inc. ("**632**") and Novar Inc. ("**Novar**") (collectively, the "**Applicants**") made an application under the *Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36,* as amended (the "**CCAA**") and an Initial Order (the "**Initial Order**") was made by the Honourable Mr. Justice Morawetz of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") granting, *inter alia*, a stay of proceedings against the Applicants until May 1, 2009 (the "**Stay Period**"), and appointing FTI Consulting Canada ULC as monitor ("**FTI Canada**" or the "**Monitor**"). The proceedings commenced by the Applicants under the CCAA will be referred to herein as the "**CCAA Proceedings**".

2. On April 8, 2009, the Honourable Mr. Justice Morawetz granted the Amended & Restated Initial Order which, *inter alia*, approved the DIP Credit Agreement (as defined in paragraph 33 of the Amended & Restated Initial Order).

3. On April 22, 2009, the Honourable Mr. Justice Morawetz granted an Order which, *inter alia* extended the Stay Period to June 26, 2009, and approved the Marketing Process.

4. Indalex's parent is Indalex Holding Corp. ("**Indalex Holding**"), which is a wholly-owned subsidiary of Indalex Holdings Finance, Inc. ("**Indalex Finance**"). Indalex BC, 632 and Novar are wholly owned subsidiaries of Indalex. Collectively, Indalex Finance and its affiliates (the "**Indalex Group**") is the second largest aluminium extruder in North America.

5. On March 20, 2009, Indalex Holding, Indalex Finance, Indalex Inc., Caradon Lebanon, Inc. and Dolton Aluminum Company, Inc. (collectively, the "**US Debtors**") commenced proceedings (the "**Ch.11 Proceedings**") under chapter 11 of the *United States Bankruptcy Code* (the "**USBC**") in the United States Bankruptcy Court, District of Delaware (the "**US Court**"). The case has been assigned to Judge Walsh.

6. The purpose of this report is to inform the Court on the following:

   (a) The progress of the Marketing Process;

   (b) The receipts and disbursements of the Applicants for the period May 2, 2009 to May 29, 2009;

   (c) The Applicants' request for approval of an increase in the Canadian Revolving Sub-Commitment under the DIP Credit Agreement from $24,360,000 to $29,500,000 pursuant to Amendment No. 1 to the DIP Credit Agreement, dated June 10, 2009, (the "**DCA Amendment**") and the Monitor's recommendation thereon; and

   (d) The Applicants' revised and extended cash flow forecast to July 24, 2009, 2009 (the "**June 11 Forecast**"), prepared on the assumption that the DCA Amendment is approved.

7. In preparing this report, the Monitor has relied upon unaudited financial information of the Applicants, the Applicants' books and records, certain financial information prepared by the Applicants and discussions with the Applicants' management. The Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the information. Accordingly, the Monitor expresses no opinion or other form of assurance on the information contained in this report or relied on in its preparation. Future oriented financial information reported or relied on in preparing this report is based on management's assumptions regarding future events; actual results may vary from forecast and such variations may be material.

8. Unless otherwise stated, all monetary amounts contained herein are expressed in United States Dollars. Capitalized terms not otherwise defined herein have the meanings defined in the Amended & Restated Initial Order or prior Monitor's Reports.

## THE PROGRESS OF THE MARKETING PROCESS

9. This Court approved the Marketing Process described in the Second Report of the Monitor dated April 20, 2008. The Monitor provided an update on the progress of the Marketing Process in its Third Report dated May 11, 2009. Copies of the Monitor's Reports can be obtained from the Monitor's website at http://cfcanada.fticonsulting.com/indalex.

10. A significant number of letters of intent were received by the LOI Deadline and a number of Interested Parties were invited to undertake further detailed due diligence.

11. Interested parties were asked to submit offers by June 4, 2009. A number of offers for the going concern acquisition of the business and assets of the Applicants and the US Debtors have now been received.

12. Management of both the US Debtors and the Applicants, in consultation with the legal and professional advisors of the US Debtors and the Applicants and the Monitor, assessed the offers received and made a recommendation to the Board of Directors of the US Debtors (the "**US Board**") and to the Board of Directors of the Applicants (the "**Canadian Board**") on which offer to proceed with. On June 10, 2009, the Canadian Board approved management's recommendation. On June 11, 2009, the US Board approved management's recommendation and authorized management to commence negotiation of a definitive agreement of purchase and sale. The negotiated agreement will, subject to the approval of the Court and the US Court, constitute a "stalking-horse bid" (the "**Stalking-Horse**") in a process which will solicit "qualifying topping bids" in contemplation of an auction involving the Stalking-Horse and those parties that submit qualifying topping bids.

13. The Monitor currently expects that the Applicants will return to Court on or around July 2, 2009, to seek approval of procedures for the solicitation of qualifying topping bids and for the conduct of the auction.

14. Details of the offers have not been included in this report in order to protect the integrity of the Marketing Process. Further detail will, of course, be provided to this Honourable Court at the appropriate time.

## RECEIPTS & DISBURSEMENTS TO MAY 29, 2009

15. The Applicants' actual cash flow on a consolidated basis for the period May 1, 2009 to May 29, 2009, was approximately $2.5 million worse than the April 7 Forecast (as defined in the Monitor's First Report) as summarized below:

| | Forecast | Actual | Variance |
|---|---|---|---|
| | $000 | $000 | $000 |
| **Receipts:** | | | |
| Accounts Receivable | 21,272 | 17,886 | (3,386) |
| Other | 354 | 240 | (114) |
| **Total Receipts** | **21,626** | **18,126** | **(3,500)** |
| **Disbursements:** | | | |
| Raw Materials - Metals | 14,721 | 13,486 | 1,235 |
| Raw Materials - Other Materials | 615 | 531 | 84 |
| Payroll | 1,851 | 2,974 | (1,123) |
| Benefits | 673 | 573 | 100 |
| Operating Expenses | 2,513 | 1,479 | 1,035 |
| GST | 354 | 518 | (164) |
| Capex - Tool & Die | 264 | 122 | 142 |
| Bank Fees & Interest | 236 | 111 | 125 |
| Legal & Professional Fees | 325 | 797 | (472) |
| **Total Disbursements** | **21,553** | **20,591** | **962** |
| **Excess of Receipts over Disbursements** | **73** | **(2,465)** | **(2,538)** |
| **Pre-Filing Facility Roll-Up:** | | | |
| Balance b/f | 3,619 | 6,633 | (3,014) |
| Collections | (3,619) | (6,633) | 3,014 |
| **Balance c/f** | **0** | **0** | **0** |
| **DIP Facility:** | | | |
| Balance b/f | 0 | 0 | 0 |
| Advances | 39,180 | 35,231 | 3,949 |
| Repayments | (18,007) | (11,493) | (6,514) |
| **Balance c/f** | **21,173** | **23,738** | **(2,565)** |
| Margin Availability | 21,964 | 24,360 | 2,396 |
| Total Senior Secured Borrowings | (21,173) | (23,738) | (2,565) |
| **Excess/(Shortfall) Availability** | **791** | **622** | **(169)** |

16. Explanations for the key variances in actual receipts and disbursements as compared to the April 7 Forecast are as follows:

(a) Accounts receivable collection assumptions have proven aggressive, notwithstanding the Applicants efforts to collect receivables;

(b) Payroll disbursements were higher than forecast primarily as a result of the seasonal increase production levels and headcount that had inadvertently not been included in the forecast and the impact of the increase in the Canadian/US exchange rate; and

(c) Remaining disbursements were lower than forecast primarily owing to lower then anticipated metal purchase arising in part from constrained liquidity and the deferral of payments as described later in this report.

## THE APPLICANTS' REQUEST FOR APPROVAL OF AN INCREASE IN THE CANADIAN REVOLVING SUB-COMMITMENT

### LIQUIDITY ISSUES

17. In recent weeks, the Applicants have experienced unanticipated restricted liquidity as a result of the margin availability calculation and the Canadian Sub-Facility Limit under the DIP Credit Agreement. The Monitor raised its concerns with respect to these issues with the Applicants, the US Debtors and the advisors to the DIP Lenders. The Monitor was advised that the Applicants understood the seriousness of the situation and were considering various strategies to address the immediate cash flow issues. Further, the Monitor was advised that the Applicants were taking diligent steps to control expenditures and adhere to their budget.

18. However, notwithstanding these efforts there is insufficient cash available under the current borrowing facilities to meet ongoing expenses. As a result, the Applicants have experienced difficulty sourcing supply of raw materials and certain post-filing payables have become overdue. As at June 8, 2009, the Applicants estimate that approximately $1.9 million of post-filing third-party liabilities are past due for payment.

19. In order to provide the additional liquidity required for payment of accrued post-filing liabilities and funding of operations, the US Debtors, the Applicants and the DIP Lenders have entered into the DCA Amendment. The Applicants have informed the Monitor that they will continue their efforts to ensure expenses are only incurred as necessary for continuing operations and completing the restructuring process.

## THE DCA AMENDMENT

20. The DCA Amendment, a redacted copy of which is attached hereto as Appendix A, was executed on June 10, 2009. The DCA Amendment amends the DIP Credit Agreement as follows:

    (a) The "availability block", which restricts borrowings by the US Debtors, is reduced from $4 million to $2 million immediately and from $2 million to zero from July 3, 2009 provided that the Borrowers are in compliance with their obligation to meet the milestones set out in the DIP Credit Agreement;

    (b) Increases the Canadian Revolving Sub-Commitment from $24,360,000 to $29,500,000, subject to approval by the Court;

    (c) Restates the following milestones:

        (i) The deadline for executing a stalking-horse agreement, subject to Court approval, from June 18, 2009 to June 16, 2009; and

        (ii) The deadline for closing a sale of the business from July 20, 2009 to July 21, 2009.

21. Based on the June 11 Forecast, the Applicants estimate that the DCA Amendment provides approximately $3.9 million in additional liquidity to the Applicants. In addition, the DCA Amendment provides approximately $4 million in additional liquidity to the US Debtors.

22. A fee is payable in respect of the DCA Amendment. The Applicants have informed the Monitor that they have been requested not to publicly disclose the fee arrangement, but that they will provide details to the Court. The Applicants have informed the Monitor of the fee arrangement and the Monitor is of the view that the quantum of the fee is not commercially unreasonable in the circumstances.

23. As described in more detail below, the June 11 Forecast includes payment of the overdue post-filing liabilities by the week ended July 3, 2009 and shows that the Applicants will have sufficient liquidity to fund ongoing operations and make future payments when due if the increase in the Canadian Revolving Sub-Commitment as provided for in the DCA Amendment is approved by the Court and the underlying business assumptions in the June 11 Forecast are met.

24. The DCA Amendment is conditional on the letter of intent selected by the US Debtors and the Applicants as the basis for the negotiation of the stalking-horse bid meeting certain value thresholds (which thresholds have been redacted from Appendix A to protect the integrity of the Marketing Process). The Applicants and the US Debtors believe that the offer selected meets these thresholds. Based on the analysis provided by Jefferies, the Monitor concurs with this view.

## THE MONITOR'S RECOMMENDATION

25. The Applicants are in need of additional liquidity in order to bring the arrears of post-filing liabilities current and to continue operations while the Marketing Process is completed.

26. The Marketing Process is well advanced and the Applicants and the US Debtors are in the process of negotiating a stalking-horse agreement, subject to the approval of the Court and the US Court. The Monitor is of the view that paying the arrears of post-filing liabilities, maintaining operations and completing the Marketing Process is in the best interests of all stakeholders.

27. Based on the information currently available, the Monitor is of the view that creditors of the Applicants will not be materially prejudiced by the approval of the proposed increase in the Canadian Revolving Sub-Commitment from $24,360,000 to $29,500,000.

28. Accordingly, the Monitor respectfully recommends that this Honourable Court approve the Applicants request for an increase in the Canadian Revolving Sub-Commitment from $24,360,000 to $29,500,000.

## REVISED AND EXTENDED CASH FLOW FORECAST TO JULY 24, 2009

29. The June 11 Forecast is attached hereto as Appendix B. The significant changes in the underlying assumptions in the June 11 Forecast as compared to the April 7 Forecast are summarized below:

(a) A reduction in accounts receivable collections to reflect the Applicants' recent collection experience;

(b) The payment of arrears of post-filing liabilities;

(c) An increase in payroll estimates to reflect current run-rates;

(d) The inclusion of cash-in-advance payments in respect of supply from the Applicants to the US Debtors; and

(e) The increase of the Canadian Revolving Sub-Commitment as discussed earlier in this report.

The Monitor respectfully submits to the Court this, its Fourth Report.

Dated this 11th day of June, 2009.

FTI Consulting Canada ULC
In its capacity as Monitor of
Indalex Limited, Indalex Holdings (B.C.) Ltd.,
6326765 Canada Inc. and Novar Inc.

Nigel D. Meakin
Senior Managing Director

# TAB G

Court File No. CV-09-8122-00CL

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

| | | |
|---|---|---|
| THE HONOURABLE MR. | ) | FRIDAY, THE |
| | ) | |
| JUSTICE MORAWETZ | ) | 12th DAY OF JUNE, 2009 |

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF INDALEX LIMITED, INDALEX HOLDINGS (B.C.) LTD., 6326765 CANADA INC. and NOVAR INC. (the "Applicants")

**ORDER**

**(Re Amendment to the DIP Credit Agreement)**

**THIS MOTION** made by the Applicants pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, for an Order approving (i) an amendment to the DIP Credit Agreement (as defined in the Amended Amended and Restated Initial Order) and (ii) the Third Report of the Monitor dated May 11, 2009 (the "**Third Report**"), was heard this day at 361University Avenue, Toronto, Ontario.

**ON READING** the material filed, including the Notice of Motion and the Fourth Report of the Monitor dated June 11, 2009 (the "**Fourth Report**"), FTI Consulting Canada ULC, and on hearing the submissions of counsel for the Applicants, counsel for the Monitor, and counsel for the JPMorgan Chase Bank, N.A., and on being advised that the Applicants' Service List was served with the Motion Record herein;

**SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record herein be and is hereby abridged and that the Motion is properly returnable today and service on any interested party other than those parties served is hereby dispensed with.

**MONITOR'S ACTIVITIES**

2. **THIS COURT ORDERS** that that the Third Report and the activities of the Monitor (as described in the Third Report) are hereby approved.

**AMENDMENT TO THE DIP CREDIT AGREEMENT**

3. **THIS COURT ORDERS** that the Amendment No. 1 to the DIP Credit Agreement dated June 11, 2009 attached as Appendix A to the Fourth Report is hereby approved.

4. **THIS COURT ORDERS** that paragraph 33 of the Amended Amended and Restated Initial Order is hereby deleted and replaced with the following:

> 33. THIS COURT ORDERS that the Canadian Subsidiary Borrower (as defined in the DIP Credit Agreement) is hereby authorized and empowered to obtain, borrow and repay under a credit facility pursuant to an agreement, substantially in the form of Exhibit "D" to the Supplemental Affidavit, as amended by Amendment No. 1 to the DIP Credit Agreement, dated June 11, 2009 (subject to such non-material amendments thereto as may be consented to in advance by the Monitor) (the "DIP Credit Agreement") among the Applicants, Indalex Holdings Finance, Inc., Indalex Holding Corp., the non-Applicant affiliates party thereto, the lenders party thereto (the "DIP Lenders") and the DIP Agent as administrative agent for the purposes set out in the DIP Credit Agreement provided that the aggregate principal amount of the borrowings by the Applicants under such credit facility outstanding at any time shall not exceed a sub-facility in the amount of U.S. $29,500,000 and shall be made in accordance with the terms of the DIP Loan Documents.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

JUN 12 2009

PER / PAR:

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

Court File No. CV-09-8122-00CL

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)

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

Proceeding commenced at Toronto

**ORDER**
**(Re Amendment to the DIP Credit Agreement)**

**BLAKE, CASSELS & GRAYDON LLP**
Barristers and Solicitors
199 Bay Street, Suite 2800
Box 25, Commerce Court West
Toronto, Ontario M5L 1A9

**Linc Rogers** LSUC No.: 43562N
Tel: (416) 863-4168

**Katherine McEachern** LSUC No.: 38345M
Tel: (416) 863-2566
Fax: (416) 863-2653

**Jackie Moher** LSUC No.: 53166V
Tel: (416) 863-3174
Fax: (416) 863-2653

Lawyers for the Applicants

12304030.1

# TAB H

2009 CarswellOnt 4263,

2009 CarswellOnt 4263

Indalex Ltd., 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, IN-DALEX HOLDINGS (B.C.) LTD., 6326765 CANADIAN INC. and NOVAR INC. (Applicants)

Ontario Superior Court of Justice

Morawetz J.

Heard: June 12, 2009
Judgment: June 15, 2009
Docket: CV-09-8122-00CL



Counsel: Linc Rogers, Jackie Moher for Applicants

Ashley Taylor for Monitor, FTI Consulting Canada ULC

G. Moysa for JPMorgan (DIP Lender)

Andrew Hatnay for Certain Reitrees

G. Finlayson for Second Help Priority Secured Noteholders

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

Subject: Insolvency

Bankruptcy and insolvency --- Proposal — Companies' Creditors Arrangement Act — Miscellaneous issues.

**Statutes considered:**

*Bankruptcy Code*, 11 U.S.C.

Chapter 11 — referred to

*Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36

Generally — referred to

2009 CarswellOnt 4263,

*Morawetz J.*:

1 These are the reasons in respect of my endorsement of June 12, 2009.

2 The motion was short served with the Applicants citing urgency. Counsel to the Applicants and counsel to the Monitor both indicated that additional availability on the DIP Financing is required (1) so that overdue payables can be satisfied; (2) to support ongoing operations; and (3) to support the Marketing Process.

3 It is preferable, of course, for proper notice to be given. However, this was not done in this case. I have been satisfied that urgency has been established and no party is opposed to the motion.

4 Counsel to certain retirees and counsel to the Second Priority Secured Noteholders did, however, wish to reserve their rights with respect to the relief sought.

5 I had difficulty in dealing with the request to reserve rights for two reasons. First, the relief sought is inconsistent with the ability for a party, on a practical level, to reserve rights. If the DIP Facility was to be increased with a reservation of rights, uncertainty would prevail if such a reservation was also granted. Would it cause the DIP Lender to withhold advances? or, if advances were made - would they have priority?

6 Second, neither the retirees nor the Noteholders put forth any alternative.

7 In the face of no alternative suggestions or proposal - uncertainty would again prevail. At this stage of the CCAA proceedings additional uncertainly does not represent a positive development.

8 Having reviewed the record and having heard submissions, I am satisfied that the requested relief is necessary and appropriate.

9 With respect to the retirees, counsel to the Applicants made the point that the amendment increases the availability of funds. It is hoped that the advance will improve the position of the stakeholders.

10 Counsel to the retirees subsequently advised that, having had the opportunity, during a recess, to discuss this matter with counsel to the Applicants and his clients, his clients were no longer insisting on a reservation of rights.

11 With respect to the Noteholders, I note that there is still an issue that remains outstanding, namely status to appear (this is also an issue with the UCC). This issue need not be addressed today but given the cross-boarder relationships between the Chapter 11 proceedings and the CCAA proceedings, it is an issue that should be resolved sooner as opposed to later.

12 For the purposes of this motion, counsel to the Noteholders did advise that there is an ongoing challenge in the Chapter 11 proceeds, relating to the priority of secured parties. Counsel also advised that his clients have reserved their rights on this issue in the Chapter 11 proceedings.

13 The Noteholders are, of course, in a position to raise the issues in the Chapter 11 proceedings. Nothing in this motion today should be taken as impairing the ability of the Noteholders to continue with their challenge in the Chapter 11 proceedings, or in these proceedings.

14 However, it is also clear and has been acknowledged by counsel to the Noteholders that his clients are not claiming priority over the increase in the DIP Facility in these proceedings. On this point there is no reservation of

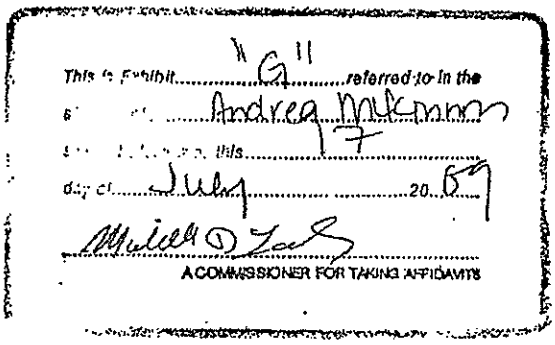
rights. I also note for the record that counsel to the UCC was not opposed to the relief and that counsel to J.P. Morgan supports the request of the Applicants and that the Monitor recommended that the relief be granted.

15 I am satisfied that it is appropriate to grant the requested relief.

16 Order to go in the form presented.

END OF DOCUMENT

# TAB I


This is Exhibit G 11 referred to in the
Andrea McKinnon
17
day of July 20 09
A COMMISSIONER FOR TAKING AFFIDAVITS

MORNEAU SOBECO

HUMAN RESOURCE CONSULTING AND ADMINISTRATIVE SOLUTIONS
*Calgary • Fredericton • Halifax • Kitchener • London • Montréal • Ottawa • Pittsburgh • Québec • St. John's • Toronto • Vancouver*
www.morneausobeco.com

895 Don Mills Road, Suite 700
One Morneau Sobeco Centre
Toronto ON M3C 1W3
tel.: 416.445.2700 • fax: 416.445.7989

July 16, 2009

**Privileged**

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

**Re: Retirement Plan for the Executive Employees of Indalex Limited and Associated Companies**

Dear Mr. Hatnay:

You have retained us to provide you with a rough estimate of the amount that should be deposited into the above-mentioned Plan assuming it were to be wound up as at July 15, 2009.

We understand that:

1. You are representing the retirees of the Plan.
2. The actuarial report as at January 1, 2008 that you provided to us was the most recent report filed with the pension regulators.
3. No amendments have been made to the Plan since January 1, 2008.
4. All required contributions set out in the actuarial report as at January 1, 2008, have been deposited into the Plan as at July 15, 2009.
5. You do not have any information regarding the current value of the Plan's assets. We are asked to estimate this figure.
6. The Plan is registered in Ontario and is subject to the funding requirements of the Pension Benefits Act of Ontario and Regulation 909. All members, former members, and retirees were employed in Ontario.

Pursuant to Section 75 of the Pension Benefits Act of Ontario, the employer is required to pay into the Plan the amount by which the Plan's wind up liability exceed the Plan's assets. You requested us to provide you with a rough estimate of this amount.

For the purpose of our calculations, we have relied on the information and results set out in the actuarial report as at January 1, 2008. There is insufficient information in the report for us to verify the reasonableness of the results of actuarial report as at January 1, 2008.

It may take two years or more for the Plan administrator to complete the wind up process and fully settle the pension benefits under the Plan. The Plan's financial position can change significantly from now to the date when the benefits are fully settled. We have not quantified the financial implications of the potential adverse deviations. Should the Plan's assets be insufficient to settle the full benefits, the Plan beneficiaries' benefits would have to be reduced.

We have set out the assumptions that we used in the attached Exhibit.

Our rough estimate of the Plan's wind up liability is $8.0 million as at July 15, 2009 and the assets available for benefits are $4.8 million, resulting in a wind up deficiency of $3.2 million.

In performing our calculations, in our opinion:

a) The data on which our calculations are based are sufficient and reliable for the purposes of this letter.

b) The assumptions used are appropriate for the purposes of this letter.

c) The methods employed are appropriate for the purposes of this letter.

Please call us if you have any questions.

Yours truly,

Peter Peng, F.C.I.A., F.S.A.
Principal

Richard M. Kular, F.C.I.A., F.S.A.
Principal

# Exhibit

## Assumptions

In determining the assets and liabilities of the Plan, it is necessary to make assumptions with respect to the factors which will affect these amounts in the future. Emerging experience, differing from the assumptions, will result in gains or losses, which will be revealed at the time the assets of the Plan are disbursed.

The factors and assumptions used to develop the financial position as at the last valuation date of January 1, 2008 and July 15, 2009 are described below.

| | July 15, 2009<br>Wind up Valuation | January 1, 2008<br>Wind up/ Solvency |
|---|---|---|
| Interest rates for lump sum settlements | 3.8% per annum for 10 years, 5.8% per annum thereafter | 4.5% per annum for 10 years, 5% per annum thereafter |
| Interest rate for settlement through annuity purchase | 4% per annum | 4.3% per annum |
| Settlement method | All but one transferred member would be settled by annuity purchase | All but one transferred member would be settled by annuity purchase |
| Settlement date | July 15, 2009 | January 1, 2008 |
| Mortality | 1994 Uninsured Pensioners Mortality Table (projected by scale AA to 2020) (UP94@2020). | 1994 Uninsured Pensioners Mortality Table (projected by scale AA to 2015) (UP94@2015) |
| Percentage of members who are married at retirement and assumed spousal ages | 100% married<br>Husband is 4 years older than the wife. | 100% married<br>Husband is 4 years older than the wife. |
| Retirement | Will retire at an age between 55 and 65 at which the value of their pension benefits is greatest. | Will retire at an age between 55 and 65 at which the value of their pension benefits is greatest. |
| Contingency reserve for any data corrections or additions | Nil | Nil |
| Wind up expenses | $100,000 | $65,000 |

According to the actuarial report as at January 1, 2008, the Plan provides that the annual pension is limited to the maximum pension benefit permissible under the Income Tax Act in effect at the date of pension commencement. The report did not disclose any assumption regarding the escalation of the maximum benefit permissible. We have assumed that the valuation has appropriately escalated the maximum, where necessary.

**Asset Extrapolation**

We extrapolated the asset value as at July 15, 2009, by adding to the value of the assets as at January 1, 2008 the contributions set out in Section 6 of the actuarial report as at January 1, 2008, subtracting the assumed pension payments and expenses, and adjusting for the assumed investment gains and losses from January 1, 2008 to July 15, 2009.

We assumed that there were no changes to the membership from January 1, 2008 to July 15, 2009. Specifically, we assumed that there were no deaths among the pensioners. Consequently, our assumed pension payments were calculated as the annual amount set out in Appendix C of the actuarial report as at January 1, 2008, multiplied by 19 / 12 (representing 19 monthly payments).

We assumed that the Plan's expenses from January 1, 2008 to July 15, 2009, were at the same rate as the average of the three years prior to January 1, 2008.

We assumed that the Plan's asset allocation remained the same from January 1, 2008 to July 15, 2009. (Assets were invested 80% in fixed income and 20% in equities.) We also assumed that the rate of investment gains and losses for each asset class was the same as the appropriate market total-return index.

**Rationale for Key Assumptions**

The most important assumptions we made were with respect to the annuity prices, which are determined by interest rates and mortality table.

We have referred to the "Educational Note – Assumptions for Hypothetical Wind-up and Solvency Valuations with Effective Dates between December 31, 2008 and December 30, 2009" prepared by the Canadian Institute of Actuaries, and made adjustments for the following:

1. Based on our recent experience, the risk premium over the Canada bonds has narrowed since the publication of the Educational Note.
2. The Plan's average annual pension amount was over $32,000. The insurance companies will assume lower mortality rates for retirees with higher pension amounts, resulting in higher annuity prices.
3. It will be necessary to split the pension amounts among insurance companies to ensure full Assuris coverage.

We assumed the wind up expenses to be $100,000 in total based on our experience with other plan wind ups with similar characteristics.

# TAB J

Court File No. CV-09-8122-00CL

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

| | | |
|---|---|---|
| THE HONOURABLE MR. | ) | MONDAY, THE |
| | ) | |
| JUSTICE CAMPBELL | ) | 20th DAY OF JULY, 2009 |

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF INDALEX LIMITED, INDALEX HOLDINGS (B.C.) LTD., 6326765 CANADA INC. and NOVAR INC.

**APPROVAL AND VESTING ORDER**

THIS MOTION, made by Indalex Limited, Indalex Holdings (B.C.) Ltd., and 6326765 Canada Inc. (collectively, the "Canadian Sellers") for an order approving the sale transaction (the "Transaction") contemplated by an agreement of purchase and sale among Indalex Holdings Finance, Inc., Indalex Holding Corp., Indalex Inc., Caradon Lebanon, Inc., Dolton Aluminum Company, Inc., the Canadian Sellers, and SAPA Holding AB (which has assigned all of its rights and obligations thereunder in respect of the Canadian Acquired Assets (as defined in the Sale Agreement) to SAPA Canada Inc.) (the "Canadian Purchaser") made as of June 16, 2009 and appended to the Affidavit of Fred Fazio sworn June 29, 2009, together with such non-material amendments relative to the Applicants as may be consented to by the Monitor (defined below) (the "Sale Agreement") and vesting in the Canadian Purchaser, the Canadian Sellers' right, title and interest in and to the Canadian Acquired Assets, was heard this day at 393 University Avenue, Toronto, Ontario.

ON READING the material filed, including the Notice of Motion and the Seventh Report of the court-appointed monitor, FTI Consulting Canada ULC (the "Monitor") and on hearing the submissions of counsel for the Canadian Sellers, counsel for the Monitor, counsel for the

Canadian Purchaser and counsel for the JPMorgan Chase Bank, N.A., and on being advised that the Canadian Sellers' Service List was served with the Motion Record herein;

**APPROVAL AND VESTING**

1. THIS COURT ORDERS that, if necessary, the time for service of this Notice of Motion and the Motion Record is hereby abridged so that this motion is properly returnable today and hereby dispenses with further service thereof.

2. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved, and that the Sale Agreement is commercially reasonable and in the best interests of the Canadian Sellers and its stakeholders. The execution of the Sale Agreement by the Canadian Sellers is hereby authorized and approved, and the Canadian Sellers are hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of, or to further evidence or document, the Transaction and for the conveyance of the Canadian Acquired Assets to the Canadian Purchaser.

3. THIS COURT ORDERS AND DECLARES that upon the delivery of a Monitor's certificate to the Canadian Purchaser substantially in the form attached as Schedule A hereto (the "Monitor's Certificate"), and, with respect to the Quebec Property (as defined in Schedule B) only, the execution of a deed of transfer of the Quebec Property by Indalex Limited (being one of the Canadian Sellers), to the Canadian Purchaser in accordance with the Deed of Transfer (hereinafter defined) and, with respect to the Quebec Property only, the execution of the Deed of Mainlevée (as hereinafter defined) in accordance with paragraphs 9 and 10 of this Order, all of the Canadian Sellers' right, title and interest in and to the Canadian Acquired Assets described in the Sale Agreement (including, without limitation, the real and immoveable property described in Schedule B) shall vest absolutely in the Canadian Purchaser free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "Claims"), whether such Claims came into existence prior to, subsequent to, or as a result of any previous orders of this Court, contractually, by operation of law or otherwise, including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of

the Honourable Justice Morawetz dated April 3, 2009, as amended and restated; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system, including, without limitation, registrations made at the Registry of Personal and Moveable Real Rights in the Province of Quebec; and (iii) those Claims listed on Schedule C hereto (all of which are collectively referred to as the "Encumbrances", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule D (the "Permitted Encumbrances")) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Canadian Acquired Assets are hereby expunged and discharged as against the Canadian Acquired Assets. Notwithstanding the foregoing, the Canadian Acquired Assets shall vest in the Canadian Purchaser subject to the Permitted Liens (as both terms are defined in the Sale Agreement);

**REAL PROPERTY**

**(a) Ontario**

4. THIS COURT ORDERS that upon the registration in the Land Registry Office for the Land Titles Division of Toronto (No. 66) (the "Toronto Land Registry Office) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* (Ontario) and the *Land Registration Reform Act* (Ontario) with respect to the Toronto Property (as defined in Schedule B), the Land Registrar for the Toronto Land Registry Office is hereby directed to enter the Canadian Purchaser as the owner of the Toronto Property in fee simple, and is hereby directed to delete and expunge from title to the Toronto Property all of the Claims relating to the Toronto Property, including but not limited to, the Claims listed in Schedule C, subject only to the Permitted Encumbrances relating to the Toronto Property listed in Schedule D.

5. THIS COURT ORDERS that upon registration in the Land Registry Office for the Land Titles Division of Peel (No. 43) (the "Mississauga Land Registry Office") of an Application for Vesting Order in the form prescribed by the *Land Titles Act* (Ontario) and the *Land Registration Reform Act* (Ontario) with respect to the Mississauga Property (as defined in Schedule B), the Land Registrar for the Mississauga Land Registry Office is hereby directed to enter the Canadian Purchaser as the owner of the Mississauga Property in fee simple, and is hereby directed to delete and expunge from title to the Mississauga Property all of the Claims relating to the

Mississauga Property, including but not limited to, the Claims listed in Schedule C, subject only to the Permitted Encumbrances relating to the Mississauga Property listed in Schedule D.

**(b) Alberta**

6. THIS COURT ORDERS that, subject to the Permitted Encumbrances relating to the Alberta Property (as defined in Schedule B) listed in Schedule D, upon being presented with an original letter from counsel to the Canadian Sellers, Blake, Cassels & Graydon LLP, directed to the Alberta Land Titles Office confirming receipt of the Canadian Purchase Price (as defined in the Sale Agreement) payable on Closing Date (as defined in the Sale Agreement), and an Affidavit of Value as prescribed by the *Land Titles Act* (Alberta), the Alberta Land Titles Office be and is hereby authorized and directed to cancel the existing certificates of title to the Alberta Property and to issue new certificates of title in the name of the Canadian Purchaser, c/o Heenan Blaikie P.O. Box 185, Suite 2600, 200 Bay Street, South Tower, Royal Bank Plaza, Toronto Ontario, M5J 2J4, as specifically set out in the said letter, and the Alberta Land Titles Office be and is hereby directed to delete and expunge from title to the Alberta Property all of the Claims relating to the Alberta Property, including but not limited to, the Claims listed on Schedule C, subject only to the Permitted Encumbrances relating to the Alberta Property listed in Schedule D.

7. THIS COURT ORDERS that the cancellation of titles and issuance of new titles and discharge of instruments as set out in paragraph 6 shall be registered notwithstanding the requirements of Section 191(1) of the *Land Titles Act* (Alberta).

**(c) British Columbia**

8. THIS COURT ORDERS that the BC Property (as defined in Schedule B) is hereby conveyed to and vested in the Canadian Purchaser and upon presentation for registration in the Land Title Office for the Land Title District of New Westminster of a certified copy of this Order, the Registrar of Land Titles (the "BC Registrar") is hereby directed to enter the Canadian Purchaser as owner of the BC Property together with all buildings and other structures, facilities and improvements located thereon and fixtures, systems, interests, licences, rights, covenants, restrictive covenants, commons, ways, profits, privileges, easements and appurtenances to the said hereditaments belonging, or with the same or any part thereof, held or enjoyed or appurtenant thereto, in fee simple in respect of BC Property, and this Court, having considered

the interests of third parties, further orders that the BC Registrar is hereby directed to discharge, release, delete and expunge from title to the BC Property all of the Claims relating to the BC Property, including but not limited to, the Claims listed in Schedule C, subject only to the Permitted Encumbrances relating to the BC Property listed in Schedule D, and this Court declares that it has been proved to the satisfaction of the Court on investigation that the title of the Canadian Purchaser in and to the BC Property is a good, safe holding and marketable title and directs the BC Registrar to register indefeasible title in favour of the Canadian Purchaser as aforesaid.

**(d) Quebec**

9. THIS COURT ORDERS AND DIRECTS, in order to give effect to this Order prior to closing of the Transaction, Indalex Limited and the Canadian Purchaser to enter into a deed of transfer with respect to the Quebec Property, upon the same terms and conditions substantially as those set forth in the draft deed of transfer attached hereto as Schedule E (the "Deed of Transfer"), which Deed of Transfer shall be effective only upon the delivery of the Monitor's Certificate to the Canadian Purchaser.

10. THIS COURT ORDERS AND DIRECTS, in order to give effect to this Order prior to closing of the Transaction, JPMorgan Chase Bank, N.A. to execute a deed of mainlevée with respect to the Claims listed in Schedule C relating to only the Quebec Property (the "Deed of Mainlevée"), which Deed of Mainlevée shall be effective only upon the delivery of the Monitor's Certificate to the Canadian Purchaser.

**GENERAL PROVISIONS**

11. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, proceeds from the sale of the Canadian Acquired Assets, which for clarity shall include, without limitation, all deposits, reserves, holdbacks and adjustments to the Canadian Purchase Price in favour of the Canadian Sellers (as defined in the Sale Agreement) (including amounts released from the Canadian Escrow Amount in accordance with the Sale Agreement), but shall not include the (i) Canadian Escrow Amount, and (ii) the Canadian Sellers' Cure Cost Amount (collectively, the "Sale Proceeds"), shall stand in the place and stead of the Canadian Acquired Assets, and that from and after the delivery of the Monitor's Certificate all Claims and

Encumbrances (other than the Permitted Exceptions and Permitted Liens) shall attach to the Sale Proceeds with the same priority as they had with respect to the Canadian Acquired Assets immediately prior to the sale, as if the Canadian Acquired Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

12. THIS COURT ORDERS AND DIRECTS the Monitor to file with the Court a copy of the Monitor's Certificate, forthwith after delivery thereof.

13. THIS COURT ORDERS that immediately following the filing of the Monitor's Certificate, the Monitor shall be authorized and empowered, in the name of and on behalf of the Applicants, (i) to take such acts as the Monitor shall deem necessary and appropriate to further give effect to, evidence or document the Transaction; and, (ii) make any disbursements required in connection with the actions described in (i) hereof and on account of fees and disbursements of the Monitor and its counsel and counsel to the Applicants, with no personal liability to the Monitor in connection therewith.

14. THIS COURT ORDERS AND DIRECTS that on Closing the Sale Proceeds shall be paid to the Monitor on behalf of the Canadian Sellers and on or following the Closing, subject to the Monitor on behalf of the Canadian Sellers, maintaining a reserve of the Sale Proceeds in an amount satisfactory to the Monitor (the "Reserve"), the Monitor on behalf of the Canadian Sellers is hereby authorized and directed, without further Order of the Court, to make one or more distributions (the "Distributions") to JPMorgan Chase Bank, N.A., in its capacity as administrative agent (the "Agent") for and on behalf of the DIP Lenders (as defined in the Amended Amended Restated Initial Order dated May 12, 2009, as further amended, the "Initial Order") in an amount up to the aggregate amount of all primary indebtedness, liabilities and obligations now or hereafter owing by the Canadian Sellers to the DIP Lenders (the "Canadian Obligations"). To the extent that any Canadian Obligations are satisfied by any of the Canadian Sellers' affiliated entities resident in the United States (collectively, "Indalex US") (the "Guarantee Payment") Indalex US shall be entitled to be subrogated to the rights of the Agent and the DIP Lenders under the DIP Lenders Charge (as defined in the Initial Order) to the extent of such Guaranteed Payment and following indefeasible payment in full of the Canadian Obligations, Indalex US shall be entitled to receive any Distributions, pursuant to Indalex US'

subrogation rights under the DIP Lenders Charge, in an amount up to the Guarantee Payment, subject to the Reserve.

15. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act* ("PIPEDA") and pursuant to section 18 of the *Act Respecting the Protection of Personal Information in the Private Sector*, R.S.Q. c P-39.1 (the "Quebec Privacy Act"), and any other similar legislation in the Provinces of British Columbia and Alberta, the Canadian Sellers are authorized and permitted to disclose and transfer to the Canadian Purchaser all human resources and payroll information in the Canadian Sellers' records pertaining to the Canadian Sellers' past and current employees. The Canadian Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects in compliance with the provisions of PIPEDA and the Quebec Privacy Act.

16. THIS COURT ORDERS that, notwithstanding:

(a) the pendency of these proceedings;

(b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of any of the Canadian Sellers and any bankruptcy order issued pursuant to any such applications; and

(c) any assignment in bankruptcy made in respect of any of the Canadian Sellers;

the vesting of the Canadian Acquired Assets in the Canadian Purchaser pursuant to this Order and any Distributions made pursuant to paragraph 14 shall be binding on any trustee in bankruptcy that may be appointed in respect of any of the Canadian Sellers and shall not be void or voidable by creditors of the relevant Applicant nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

17. THIS COURT ORDERS AND DECLARES that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).

18. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Canadian Sellers and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Canadian Sellers, as may be necessary or desirable to give effect to this Order or to assist the Canadian Sellers and their agents in carrying out the terms of this Order.

19. THIS COURT ORDERS AND AUTHORIZES the provisional execution of this Order in the Province of Quebec.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

JUL 20 2009

PER / PAR:

# TAB K

Court File No. CV-09-8122-00CL

**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")

**AFFIDAVIT OF BOB KAVANAUGH**
(Sworn August 12, 2009)

I, Bob Kavanaugh, of the City of Lincolnshire, in the State of Illinois, United States of America, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am the former Vice-President, Corporate Controller, of Indalex Limited ("Indalex") and as such have knowledge of the matters deposed to in this affidavit. Where this affidavit is not based on my direct personal knowledge, it is based on information and belief and I verily believe such information to be true.

2. This affidavit is sworn in support of the Applicants' request for dismissal of the motions brought by certain retired executives[1] (collectively, the "SERP Group") and the United Steelworkers (the "Union"). Both the SERP Group and the Union request, *inter alia*, a declaration that the proceeds derived from the sale of Indalex's assets are subject to a deemed trust for the benefit of beneficiaries of certain pension plans administered by Indalex.

[1] Keith Carruthers, Leon Kozierok, Bertram McBride, Max Degen, Eugene D'Iorio, Richard Smith, Robert Leckie and Neil Fraser.

3. The Union seeks relief in connection with the Retirement Plan for Salaried Employees of Indalex Limited and Associated Companies, registered with the Financial Services Commission of Ontario ("FSCO") and the Canadian Revenue Agency ("CRA") under Registration No. 0533646 (the "Salaried Plan").

4. The SERP Group seeks relief in connection with the Retirement Plan for Executive Employees of Indalex Limited and Associated Companies, registered with the FSCO and CRA under Registration No. 0455626 (the "Executive Plan").

**Salaried Plan**

5. Indalex is the sponsor and administrator of the Salaried Plan. The Salaried Plan is in the process of being fully wound up with an effective date of December 31, 2006 (the "Effective Date"). The Salaried Plan consists of both a defined benefit (DB) component and a defined contribution (DC) component. No pensions have accrued under the Salaried Plan since December 31, 2006.

6. All current service contributions have been made to the Salaried Plan.

7. As at the Effective Date, the DB component of the Salaried Plan had an estimated wind-up deficiency of $1,655,200. Attached hereto as Exhibit "A" is an actuarial valuation report on the wind-up of the DB component of the Salaried Plan, effective December 31, 2006. Indalex has been amortizing the wind-up deficiency in the Salaried Plan by means of special payments to the plan payable over five years from the Effective Date. The last special payment is scheduled to be made on December 31, 2011.

8. In 2007, Indalex made total special payments of $709,013 to the Salaried Plan.

9. In 2008, Indalex made total special payments of $875,313 to the Salaried Plan.

10. As at December 31, 2008, the DB component of the Salaried Plan had an estimated wind-up deficiency of $1,795,600.

11. In April, 2009, Indalex made a special payment of $601,000 to the Salaried Plan.

12. In June, 2009, Indalex filed with FSCO an actuarial valuation in respect of the DB component of the Salaried Plan with an effective date of December 31, 2008. This actuarial valuation indicated that an additional "catch-up" special payment of $25,100, plus interest accruing from January 1, 2009, was required to be made to the DB component of the Salaried Plan at the time of filing the valuation with FSCO. This special payment has not been made to the Salaried Plan because paragraph 7(a) of the Initial Order of the Honourable Mr. Justice Morawetz dated April 3, 2009 (as amended and restated) prohibited Indalex from making any special payments to its pension plans after filing for protection under the *Companies' Creditors Arrangement Act*. No other contributions are or will be required to be made to the Salaried Plan during 2009.

13. Since July 1, 2006, the assets of the DB component of the Salaried Plan have been entirely invested in fixed income securities in order to immunize the fund from fluctuations in the stock market.

14. The market value of the assets of the DB component of the Salaried Plan as at June 30, 2009 was $17,736,339. Attached hereto as Exhibit "B" is a copy of the Statement of Net Assets available for Benefits as of June 30, 2009.

**Executive Plan**

15. Indalex is the sponsor and administrator of the Executive Plan. The Executive Plan is a defined benefit pension plan and is an ongoing plan that has not been fully wound up.

16. Indalex has made all required contributions to the Executive Plan to-date and no amounts are currently due or owing to the Executive Plan, including special payments.

17. As at January 1, 2008, the Executive Plan had an estimated deficiency of $2,996,400 determined on a wind-up basis. In 2008, Indalex made total special payments of $897,000 to the Executive Plan. No further special payments are due to be made to the Executive Plan until 2011.

18. If the Executive Plan were to be fully wound up, the funded status of the plan as of the wind-up date could only be determined by an actuarial valuation of the plan performed after the wind-up date once the plan's assets and liabilities have been determined. No actuarial valuation of the Executive Plan has been prepared since the valuation performed with an effective date of January 1, 2008.

19. Sixteen individuals with benefit entitlements under the Executive Plan were last employed by Indalex in Ontario and two individuals with benefit entitlements under the Executive Plan were last employed by Indalex in Alberta.

20. There is currently one member of the Executive Plan who is on long term disability and continues to accrue benefits under the plan.

21. Currently, approximately 80% of the assets of the Executive Plan are invested in fixed income securities and approximately 20% of the assets of the Executive Plan are invested in equities.

22. The market value of the assets of the Executive Plan as at June 30, 2009 was $5,022,940. Attached hereto as Exhibit "C" is a copy of the Statement of Net Assets Available for Benefits as of June 30, 2009.

**SWORN BEFORE ME** at the City of Lincolnshire, in the State of Illinois this 10th day of August, 2009

A NOTARY PUBLIC

**BOB KAVANAUGH**

"OFFICIAL SEAL"
Robert J. O'Roark
Notary Public, State of Illinois
Lake County
My Commission Expires Aug. 8, 2012

# TAB L

Court File No. CV-09-8122-00CL

*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

## NOTICE OF MOTION

**THE APPLICANTS**, Indalex Limited, Indalex Holdings (B.C.) Ltd., 6326765 Canada Inc. and Novar Inc. (the "Applicants") will make a motion to the Court, on a date to be fixed by the Honourable Mr. Justice Campbell (the "Hearing Date"), 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 AN ORDER**

a) abridging the time for service of the Notice of Motion and Motion Record, if necessary, and that the motion is properly returnable on the Hearing Date;

b) lifting the stay of proceedings for the purpose of allowing the Applicants, or any of them, to (i) file a voluntary assignment in bankruptcy pursuant to section 49 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "BIA"), and (ii) take all steps necessary and incidental to the filing of a voluntary assignment in bankruptcy; and

c) such further and other relief as the Applicants may request and this Honourable Court shall deem just.

**THE GROUNDS FOR THE MOTION ARE:**

**BACKGROUND**

(a) On March 20, 2009, Indalex US commenced reorganization proceedings under Chapter 11 of Title 11 of the United States Code (the "Chapter 11 Cases") before the United States Bankruptcy Court for the District of Delaware;

(b) On April 3, 2009, the Applicants commenced parallel proceedings and filed for and obtained protection from their creditors under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, pursuant to an order (the "Initial Order") of the Honourable Mr. Justice Morawetz;

(c) Pursuant to the Initial Order, FTI Consulting Canada ULC was appointed as Monitor of the Applicants;

(d) On April 8, 2009, the Initial Order was amended and restated (the "Amended and Restated Initial Order") to, *inter alia*, authorize the Applicants to exercise certain restructuring powers and authorize Indalex Limited to borrow funds (the "DIP Borrowings") pursuant to a debtor-in-possession credit agreement (as amended, the "DIP Credit Agreement") among Indalex US, the Applicants and a syndicate of lenders (the "DIP Lenders") for which JPMorgan Chase Bank, N.A. is administrative agent (the "DIP Agent");

(e) The Applicants obligation to repay the DIP Borrowings was guaranteed by Indalex US. The guarantee by Indalex US was a condition to the extension of credit by the DIP Lenders to the Applicants;

(f) On April 22, 2009, the Court granted an order which, *inter alia*, extended the stay of proceedings to June 26, 2009, and approved a marketing process (the "Marketing Process");

(g) By Order dated July 20, 2009 (the "Approval and Vesting Order"), the Court approved the sale of the Applicants' assets as a going concern to SAPA Holding AB (including any assignees, "SAPA"), and ordered that upon closing of the SAPA transaction, the proceeds of sale (the "Canadian Sale Proceeds") were to be paid to the Monitor;

(h) Pursuant to the Approval and Vesting Order, the Monitor was ordered and directed to make a distribution to the DIP Lenders, from the Canadian Sale Proceeds, in satisfaction of the Applicants' obligations to the DIP Lenders, subject to a reserve that the Monitor considered to be appropriate in the circumstances (the "Undistributed Proceeds");

(i) At the sale approval hearing, both the Former Executives and the United Steel Workers ("USW") asserted deemed trust claims over the Canadian Sale Proceeds in respect of underfunded pension liabilities in connection with certain pension plans administered by Indalex Limited, and requested that an amount representing their estimate of the underfunded deficiencies be included in the amount retained by the Monitor as Undistributed Proceeds, pending further order of the Court;

(j) As a result of the Former Executives and USW's reservation of rights, the Monitor has retained the amount of $6.75 million as Undistributed Proceeds, in addition to other amounts reserved by the Monitor;

(k) On July 31, 2009, the sale of Indalex's assets to SAPA closed. A total payment of US$17,041,391.80 was made from the Canadian Sale Proceeds by the Monitor, on behalf of the Applicants, to the DIP Agent. As this resulted in a deficiency of US$10,751,247.22 in respect of the DIP Borrowings, the DIP Agent called on the guarantee granted to the DIP Lenders by Indalex US for the amount of the deficiency (the "Guarantee Payment") and Indalex US has satisfied the obligation of the Applicants;

(l) Pursuant to paragraph 14 of the Approval and Vesting Order, Indalex US is fully subrogated to the rights of the DIP Lenders under the DIP Lenders Charge for the amount of the Guarantee Payment;

**DEEMED TRUST CLAIM**

(m) August 28, 2009 was scheduled for the hearing of the deemed trust motion and both the Former Executives and the USW served and filed their motion records on August 5, 2009;

(n) Indalex US has considered its options in light of the allegations and positions set out in the motion records filed by these parties;

**VOLUNTARY ASSIGNMENT IN BANKRUPTCY**

(o) The Applicants and Indalex US strongly dispute the validity of the deemed trust claim, and are of the view that the wind-up liability is an unsecured claim, and any deemed trust, even if it were valid, does not rank in priority to the DIP Lenders Charge;

(p) Any purported priority claimed by the USW and the Former Executives (which priority is disputed by the Applicants) is extinguished on bankruptcy;

(q) In order to provide conclusive certainty that any purported deemed trust claim does not rank in priority to the DIP Lenders Charge, pursuant to a unanimous shareholder declaration executed by Indalex Limited's immediate parent, Indalex Holding, dated as of July 31, 2009, Indalex Holding has instructed the Applicants to seek approval of the Court to file a voluntary assignment in bankruptcy to ensure that the priority regime set out in the BIA applies to the distribution of the Canadian Sale Proceeds;

**CORPORATE GOVERNANCE**

(r) The Applicants are no longer carrying on business, have no active employees and no tangible assets, other than cash (including sale proceeds) and certain tax refunds. The board of directors of the Applicants has resigned and the former directors are all currently employed by SAPA;

(s) The only material obligation remaining by Indalex under the APA is the completion of the post-closing working capital adjustment. $2.75 million is currently being held in escrow by the Monitor, to ensure any adjustment in favour of SAPA will be satisfied

with any balance to ultimately be made available to the Applicants' creditors, in accordance with their entitlement and priority;

(t) For the reasons set out above, including that the Applicants are insolvent shells and no longer carrying on business, an assignment in bankruptcy is appropriate in the circumstances;

(u) The grounds set out in the Affidavit of Keith Cooper, to be sworn (the "Cooper Affidavit");

(v) Section 49 of the BIA and Rules 2.03, 3.02 and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and

(w) Such further grounds as counsel may advise and this Honourable Court may permit.

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

a) The Cooper Affidavit;

b) A Report of the Monitor, to be filed; and

c) Such further and other materials as counsel may advise and this Honourable Court may permit.

August 20, 2009

**BLAKE, CASSELS & GRAYDON LLP**
Barristers and Solicitors
199 Bay Street, Suite 2800
Box 25, Commerce Court West
Toronto, Ontario M5L 1A9

**Linc Rogers** LSUC No.: 43562N
Tel: (416) 863-4168

**Katherine McEachern** LSUC No.: 38345M
Tel: (416) 863-2566

**Jackie Moher** LSUC No.: 53166V
Tel: (416) 863-3174
Fax: (416) 863-2653

Lawyers for the Applicants

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.

Court File No: CV-09-8122-00CL

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

Proceeding commenced at Toronto

# NOTICE OF MOTION


**BLAKE, CASSELS & GRAYDON LLP**
Barristers & Solicitors
Box 25, Commerce Court West
199 Bay Street, Suite 2800
Toronto, Ontario M5L 1A9

**Linc Rogers** LSUC No.: 43562N
Tel: (416) 863-4168

**Katherine McEachern** LSUC No.: 38345M
Tel: (416) 863-2566
Fax: (416) 863-2653

**Jackie Moher** LSUC No.: 53166V
Tel: (416) 863-3174
Fax: (416) 863-2653

Lawyers for the Applicants


12316977.3

000409

# TAB M

Court File No. CV-09-8122-00CL

**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")

# AFFIDAVIT OF KEITH COOPER

(Sworn August 24, 2009)

I, Keith Cooper, of the City of Atlanta, in the State of Georgia, United States of America, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am a Senior Managing Director with FTI Consulting Inc. On March 19, 2009, I was appointed as Chief Restructuring Officer of each of the Applicants' U.S. based affiliates, Indalex Holdings Finance, Inc., Indalex Holding Corp. ("Indalex Holding"), Indalex Inc., Caradon Lebanon, Inc., and Dolton Aluminium Company, Inc. (collectively "Indalex US" and together with the Applicants, "Indalex").

2. Indalex is an interdependent enterprise. Although I did not engage in the day to day management of the Applicants, throughout the course of these proceedings, I have worked closely and cooperatively with the Applicants and the Monitor, in order to achieve a going concern solution for Indalex's business. Accordingly, I have knowledge of the matters deposed to in this affidavit. Where this affidavit is

not based on my direct personal knowledge, it is based on information and belief and I verily believe such information to be true.

3. This affidavit is sworn in support of the Applicants' motion for an order lifting the stay of proceedings for the purposes of allowing the Applicants to file a voluntary assignment in bankruptcy. It is also sworn supplementary to the affidavit of Bob Kavanaugh sworn August 12, 2009 and in response to the motion of the Retired Executives and the USW (as both terms are defined herein) in connection with their motion requesting, *inter alia*, a declaration that the proceeds from the sale of the Applicants' business is subject to a deemed trust for the benefit of beneficiaries to certain pension plans administered by the Applicants.

## BACKGROUND

4. On March 20, 2009, Indalex US commenced reorganization proceedings under Chapter 11 of Title 11 of the United States Code (the "Chapter 11 Cases") before the United States Bankruptcy Court for the District of Delaware.

5. On April 3, 2009, the Applicants commenced parallel proceedings and filed for and obtained protection from their creditors under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA"), pursuant to an order (the "Initial Order") of the Honourable Mr. Justice Morawetz.

6. Pursuant to the Initial Order, FTI Consulting Canada ULC was appointed as Monitor of the Applicants.

7. On April 8, 2009, the Initial Order was amended and restated (the "Amended and Restated Initial Order") to, *inter alia*, authorize the Applicants to exercise certain restructuring powers and authorize Indalex Limited to borrow funds (the "DIP Borrowings") pursuant to a debtor-in-possession credit agreement (as amended, the "DIP Credit Agreement") among Indalex US, the Applicants and a syndicate of lenders (the "DIP Lenders") for which JPMorgan Chase Bank, N.A. is administrative agent (the "DIP Agent").

8. Pursuant to the terms of the Amended and Restated Initial Order, the Applicants' obligation to repay the DIP Borrowings were secured by a Court-ordered charge in priority to all liens and encumbrances, including deemed trusts and statutory liens, other than the "Administration Charge" and the "Directors' Charge".

9. DIP Borrowings were used to fund the working capital needs of the Applicants, including payment of employee wages and benefits, payment of post-filing goods and services and payment of regular course contributions to the Applicants' registered pension plans, among other cost and expenses necessary for the preservation of the Applicants' business and assets. The DIP Credit Agreement contemplated that the DIP Borrowings would be repaid from the proceeds derived from a going concern sale of Indalex's assets, on or before August 1, 2009.

10. The Applicants obligation to repay the DIP Borrowings was guaranteed by Indalex US. The guarantee by Indalex US was a condition to the extension of credit by the DIP Lenders to the Applicants. The DIP Credit Agreement providing for this guarantee was approved by the Court.

11. On April 22, 2009, the Court granted an order which, *inter alia*, extended the stay of proceedings to June 26, 2009, and approved a marketing process (the "Marketing Process") to identify a stalking horse bidder for the assets of the Applicants'. Indalex's assets were marketed in a single, consolidated process.

12. By order dated May 12, 2009, the Court further amended the Amended and Restated Initial Order (now the "Amended Amended and Restated Initial Order"). The Amended Amended and Restated Initial Order is attached hereto as **Exhibit "A"**.

13. By Order dated July 2, 2009, (the "Stalking Horse Order") SAPA Holding AB (including any assignees, "SAPA") was designated as the stalking horse bidder in accordance with the Marketing Process. The Stalking Horse Order also approved bidding procedures to solicit higher and better offers for the Applicants' assets (the "Bidding Procedures"). The asset purchase agreement (the "APA") between

Indalex and SAPA was also designated as a "Qualifying Bid" pursuant to the terms of the Bidding Procedures.

14. The Stalking Horse Order was issued over the objection of a group of eight former executives of Indalex Limited (collectively, the "Former Executives"). The endorsement of Mr. Justice Morawetz issued in connection with the granting of the Stalking Horse Order and the dismissal of the Former Executives' objection is attached hereto as **Exhibit "B"**.

15. The same day of the hearing of the motion seeking the issuance of the Approval and Vesting Order, the Former Executives brought a motion seeking the reinstatement of payments owing to them by Indalex Limited pursuant to a Supplemental Executive Retirement Plan ("SERP"), which payments were suspended by the Applicants immediately following the commencement of the CCAA proceedings. The Former Executives' motion was dismissed by the Court. The endorsement of Mr. Justice Morawetz issued in connection with the dismissal of the Former Executives' motion is attached hereto as **Exhibit "C"**. The Former Executives have sought leave to appeal this decision.

16. As no "Qualifying Bids" were received in accordance with the Bidding Procedures, by Order dated July 20, 2009 (the "Approval and Vesting Order"), the Court approved the sale of the Applicants' assets as a going concern to SAPA, and ordered that upon closing of the SAPA transaction, the proceeds of sale (the "Canadian Sale Proceeds") were to be paid to the Monitor.

17. The Former Executives objected to the granting of the Approval and Vesting Order. The objection was dismissed by the Court.

18. Pursuant to the Approval and Vesting Order, the Monitor was ordered and directed to make a distribution to the DIP Lenders, from the Canadian Sale Proceeds, in satisfaction of the Applicants' obligations to the DIP Lenders, subject to a reserve that the Monitor considered to be appropriate in the circumstances (the "Undistributed Proceeds").

19. At the hearing, the Former Executives, through counsel, advised that they intended to bring a motion before the Court to assert a deemed trust claim over the Canadian Sale Proceeds in respect of the underfunded deficiency owing by Indalex Limited to the Executive Pension Plan, from which the Former Executives receive benefits. The Former Executives requested that an amount of $3.25 million representing their estimate of the underfunded deficiency be included in the amount retained by the Monitor as Undistributed Proceeds. The Monitor agreed to include such amount, in addition to the other amounts retained.

20. The Executive Plan was not at the time of the issuance of the Approval and Vesting Order wound up and it has not been wound up as of the date hereof.

21. The United Steel Workers ("USW"), which represented the Applicants unionized workforce supported the Approval and Vesting Order. The SAPA transaction provided for the assumption of the USW collective agreements by SAPA and the continuation of employment with SAPA of all USW members employed by the Applicants. The USW, however, through counsel, reserved its rights with respect to any deemed trust claim it may have with respect to the Salaried Plan, in which certain USW members participate. I am advised by Bob Kavanaugh, the former Vice-President, Corporate Controller of Indalex Limited, that the Salaried Plan is in the process of being fully wound up with an effective date of December 31, 2006.

22. As a result of the USW's reservation of rights, the Monitor also retained the amount of $3.5 million as part of the Undistributed Proceeds, in addition to other amounts reserved by the Monitor. The total amount retained by the Monitor includes not only amounts relating to the asserted deemed trust claims, but also for amounts relating to the payment of cure costs (provided for under the APA) other costs associated with the completion of the SAPA transaction, legal and professional fees and amounts owing under the DIP Lenders Charge. Of this, $6.75 million represents the amount related to the deemed trust claims. Pursuant to the endorsement of the Honourable Mr. Justice Campbell dated July 20, 2009,

there is no obligation for the Monitor to hold this amount in a separate account, and accordingly, the Monitor has advised that this amount is being held in a general account, commingled with other funds of the estate. The funds in the account will be distributed in accordance with existing and future orders of the Court.

23. The DIP Agent advised Indalex US that to the extent the effect of the Monitor retaining the Undistributed Proceeds was that the Applicants could not repay the DIP Borrowings in full at the closing of the SAPA transaction, the DIP Agent would call on the guarantee granted by Indalex US to satisfy the deficiency.

24. On July 31, 2009, the sale of Indalex's assets to SAPA closed. A total payment of US$17,041,391.80 was made from the Canadian Sale Proceeds by the Monitor, on behalf of the Applicants, to the DIP Agent. As this resulted in a deficiency of US$10,751,247.22, the DIP Agent called on the guarantee granted to the DIP Lenders by Indalex US for the amount of the deficiency (the "Guarantee Payment") and Indalex US has satisfied the obligation of the Applicants.

25. Pursuant to paragraph 14 of the Approval and Vesting Order, Indalex US is fully subrogated to the rights of the DIP Lenders under the DIP Lenders Charge for the amount of the Guarantee Payment.

26. By Order dated July 30, 2009, the Court implemented a claims procedure (the "Claims Procedure") that called for claims against the Applicants and directors of the Applicants, in order to facilitate a determination of entitlement to the Canadian Sale Proceeds.

## DEEMED TRUST CLAIM

27. August 28, 2009 was scheduled for the hearing of the deemed trust motion and the Former Executives served and filed their motion record on August 5, 2009, asserting a deemed trust claim over the underfunded deficiency of the Executive Plan.

28. On or about August 5, 2009, the USW filed its motion seeking a deemed trust over the underfunded deficiency of the Salaried Plan.

29. Indalex US has considered its options in light of the allegations and positions set out in the motion records filed by these parties.

## VOLUNTARY ASSIGNMENT IN BANKRUPTCY

30. The Applicants and Indalex US strongly dispute the validity of the deemed trust claim, and are of the view that the wind-up liability is an unsecured claim, and any deemed trust, even if it were valid, does not rank in priority to the DIP Lenders Charge.

31. I understand that any purported priority claimed by the USW and the Former Executives (which priority is disputed by the Applicants) is extinguished on bankruptcy. In order to provide conclusive certainty that any purported deemed trust claim does not rank in priority to the DIP Lenders Charge, pursuant to a unanimous shareholder declaration executed by Indalex Limited's immediate parent, Indalex Holding, dated as of July 31, 2009, Indalex Holding has instructed the Applicants to seek approval of the Court to file a voluntary assignment in bankruptcy to ensure that the priority regime set out in the *Bankruptcy and Insolvency Act* (Canada) applies to the distribution of the Canadian Sale Proceeds.

32. While the Claims Procedure was commenced in the within proceedings, at no point in time did the Applicants rule out an eventual filing of a voluntary assignment in bankruptcy.

## CORPORATE GOVERNANCE

33. The Applicants are no longer carrying on business, have no active employees and no tangible assets, other than cash (including sale proceeds) and certain tax refunds. The board of directors of the Applicants has resigned and the former directors are all currently employed by SAPA. The Applicants are insolvent shells.

34. The only material obligation remaining by Indalex under the APA is the completion of the post-closing working capital adjustment. $2.75 million is currently being held in escrow by the Monitor, to ensure any adjustment in favour of SAPA will be satisfied with any balance to ultimately be made available to the Applicants' creditors, in accordance with their entitlement and priority.

35. For the reasons set out above, including that the Applicants are insolvent shells and no longer carrying on business, an assignment in bankruptcy is appropriate in the circumstances.

**SWORN BEFORE ME** at the City of Atlanta, in the State of Georgia this 21st day of August, 2009

Mandy Ann Williams
A NOTARY PUBLIC

Keith Cooper
**KEITH COOPER**

# TAB N

Court File No. CV-09-8122-00CL

*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.

# FOURTEENTH REPORT TO THE COURT SUBMITTED BY FTI CONSULTING CANADA ULC IN ITS CAPACITY AS MONITOR

## INTRODUCTION

1. On April 3, 2009, Indalex Limited ("**Indalex**"), Indalex Holdings (B.C.) Ltd. ("**Indalex BC**"), 6326765 Canada Inc. ("**632**") and Novar Inc. ("**Novar**") (collectively, the "**Applicants**") made an application under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") and an Initial Order (the "**Initial Order**") was made by the Honourable Mr. Justice Morawetz of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") granting, *inter alia*, a stay of proceedings against the Applicants until May 1, 2009 (the "**Stay Period**"), and appointing FTI Consulting Canada ULC as monitor ("**FTI Canada**" or the "**Monitor**"). The proceedings commenced by the Applicants under the CCAA will be referred to herein as the "**CCAA Proceedings**".

2. Indalex's parent is Indalex Holding Corp. ("Indalex Holding"), which is a wholly-owned subsidiary of Indalex Holdings Finance, Inc. ("Indalex Finance"). Indalex BC, 632 and Novar are wholly owned subsidiaries of Indalex. On March 20, 2009, Indalex Holding, Indalex Finance, Indalex Inc., Caradon Lebanon, Inc. and Dolton Aluminum Company, Inc. (collectively, the "US Debtors") commenced proceedings (the "Ch.11 Proceedings") under chapter 11 of the United States Bankruptcy Code (the "USBC") in the United States Bankruptcy Court, District of Delaware (the "US Court"). The case was assigned to Judge Walsh.

3. On April 8, 2009, Justice Morawetz granted the Amended and Restated Initial Order which, inter alia, approved the DIP Credit Agreement (as defined in paragraph 33 of the Amended and Restated Initial Order). The Amended and Restated Order was further amended on May 12, 2009, to correct certain references and typographical errors in the Amended and Restated Initial Order, and on June 12, 2009, to increase the Canadian sub-facility borrowing limit.

4. The Stay Period has been extended a number of times and currently expires January 31, 2011.

5. On April 22, 2009, Justice Morawetz granted an Order which, inter alia, approved the Marketing Process to identify a Stalking Horse bid for Indalex's assets.

6. On July 2, 2009, Justice Morawetz granted an Order which approved the Stalking-Horse Bid of Sapa Holding AB ("Sapa") as a "Qualified Bid" under the Stalking Horse Process and the Bidding Procedures.

7. No additional Qualified Bids were received in connection with the Stalking Horse Process prior to the Bidding Deadline and on July 20, 2009, the sale of substantially all of the assets and business of the Applicants and the US Debtors pursuant to the terms of the Asset Purchase Agreement dated as of June 16, 2009 by and among the US Debtors and the Applicants (other than Novar), as sellers, and Sapa, on its own behalf and on behalf of one or more Canadian Purchasers to be named (the "Sapa Transaction") was approved by the Court pursuant to the Order of Justice Campbell (the "Approval and Vesting Order"). The US Court approved the Sapa Transaction on the same date.

8. On July 30, 2009, a procedure for the submission, evaluation and adjudication of claims against the Applicants and for the submission of claims, if any, against the directors and officers of the Applicants (the "Claims Procedure") was approved pursuant to the Order of Justice Morawetz (the "Claims Procedure Order").

9. The Sapa Transaction closed in Canada and the U.S. on July 31, 2009. On the same date, all of the Applicants' directors and officers resigned.

10. On October 14, 2009, Judge Walsh of the US Court granted an order converting the Ch.11 Proceedings to proceedings under Chapter 7 of the USBC (the "Ch.7 Proceedings").

11. On October 27, 2009, the Court granted an order (the "Monitor's Powers Order") increasing the Monitor's powers in order to facilitate the orderly completion of the CCAA Proceedings and the winding up of the Applicants' estates, including

    (a) Completing the Claims Procedure;

(b) Completing the working capital calculation and any related purchase price adjustment pursuant to the Sapa Transaction. The working capital adjustment and the final purchase price were settled between the Applicants, the US Debtor, Sapa, Sun (as defined below) and the Monitor in July, 2010. As a result, the Monitor received a total of US$4,485,000 in additional proceeds;

(c) Responding to the leave to appeal motion of the Retired Executives in connection with the SERP Motion and any resulting appeal. The Retired Executives' motion for leave to appeal was dismissed by the Court of Appeal on March 24, 2010; and

(d) Responding to any matters resulting from the decision of Justice Campbell in relation to the Deemed Trust Motions and the Bankruptcy Leave Motion, including the filing of or responding to any appeal therefrom and the filing of any assignment in bankruptcy of any Applicant.

**PURPOSE OF REPORT**

12. The purpose of this, the Monitor's Fourteenth Report, is to inform the Court on the following:

(a) The status of the Claims Procedure;

(b) The status of the appeal of the Deemed Trust Motions; and

(c) The request for an extension of the Stay Period until April 30, 2011.

13. In preparing this report, the Monitor has relied upon unaudited financial information of the Applicants, the Applicants' books and records, certain financial information prepared by the Applicants and discussions with the Applicants' management. The Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the information. Accordingly, the Monitor expresses no opinion or other form of assurance on the information contained in this report or relied on in its preparation. Future oriented financial information reported or relied on in preparing this report is based on management's assumptions regarding future events; actual results may vary from forecast and such variations may be material.

14. Unless otherwise stated, all monetary amounts contained herein are expressed in United States Dollars. Capitalized terms not otherwise defined herein have the meanings defined in prior Monitor's Reports. Copies of the prior Monitor's Reports and the other materials filed with the Court can be obtained from the Monitor's website at: http://cfcanada.fticonsulting.com/indalex/.

## STATUS OF CLAIMS PROCEDURE

15. In accordance with the Claims Procedure, a Proof of Claim and a copy of the Claims Procedure were sent to each Known Creditor on August 4, 2009, the Notice to Creditors was published in the Globe and Mail on August 6, 2009 and in the Wall Street Journal on August 7, 2009, and a copy of the Notice to Creditors was posted on the Monitor's Website.

16. Any person wishing to assert a Claim or D&O Claim (as those terms are defined in the Claims Procedure Order) was required to submit their Proof of Claim or Proof of D&O Claim, with all relevant supporting documentation, by the Claims Bar Date of 5:00 p.m. (Toronto time) on August 28, 2009.

17. As reported in the Twelfth Report of the Monitor dated April 28, 2010, the Monitor reviewed the secured claim of Sun Indalex Finance, LLC ("Sun") and concluded that the Sun Claim represents a valid secured claim against the Applicants the quantum of which is yet to be determined. A determination as to the validity of unsecured Claims is being held in abeyance pending a determination as to whether there will be funds to distribute to such creditors.

18. The Monitor received 17 D&O Proofs of Claim by the Claims Bar Date and one draft D&O Proof of Claim from the United Steelworkers in October 2010. The Monitor reviewed the 18 D&O Proofs of Claim and, based on its review, formed the opinion that the D&O Claims did not trigger the indemnity in favour of the directors and officers that is secured by the Directors' Charge.

19. Accordingly, the Monitor brought a motion seeking: (a) an order declaring that none of the D&O Claims are claims for which the Applicants are required to indemnify their directors and officers and; (b) an order terminating, discharging and releasing the Directors' Charge from the Property (the "D&O Motion"). The D&O Motion was heard by Justice Campbell on November 20, 2010 and the decision is currently under reserve.

**DEEMED TRUST MOTIONS AND BANKRUPTCY LEAVE MOTION**

20. On August 28, 2009, the Retired Executives and certain members of the United Steelworkers Union (the "**USW**") brought motions seeking declarations that property of the Applicants is subject to deemed trusts in favour of the beneficiaries of the "Executive Pension Plan" and the "Salaried Pension Plan", respectively (the "Deemed Trust Motions").

21. On the same date, the Applicants brought a motion for leave to lift the stay of proceedings for the purpose of allowing one or more of the Applicants to file an assignment in bankruptcy (the "Bankruptcy Leave Motion").

22. The Deemed Trust Motions and the Bankruptcy Leave Motion were heard by Justice Campbell on August 28, 2009. On February 18, 2010, Justice Campbell released written reasons dismissing the Deemed Trust Motions, holding that no deemed trusts arose with respect to wind up deficiencies under either the Executive Pension Plan or the Salaried Pension Plan (the "Deemed Trust Decision"). Based on the Deemed Trust Decision, Justice Campbell concluded that it was unnecessary to deal with the Bankruptcy Leave Motion.

23. Leave to appeal the Deemed Trust Decision was granted by the Court of Appeal for Ontario on May 20, 2010 and the appeal was heard on November 23 and 24, 2010 (the "**Pension Appeal**"). The decision of the Court of Appeal is currently under reserve.

## EXTENSION OF THE STAY PERIOD

24. The Stay Period currently expires on January 31, 2011. Additional time is required to complete the matters necessary for the completion of the CCAA Proceedings, including dealing with the outcome of the D&O Motion, the Pension Appeal, and the distribution of proceeds from the Sapa Transactions.

25. The distribution of proceeds cannot occur until the D&O Motion and the Pension Appeal are resolved. The Monitor believes that an extension of the stay of proceedings is necessary to provide stability during that time.

26. The Monitor therefore respectfully requests that this Honourable Court grant an extension of the Stay period until April 30, 2011.

The Monitor respectfully submits to the Court this, its Fourteenth Report.

Dated this 20th day of January, 2011.

FTI Consulting Canada ULC
in its capacity as the Monitor of
Indalex Limited, Indalex Holdings (B.C.) Ltd.,
6326765 Canada Inc. and Novar Inc.

Nigel D. Meakin
Senior Managing Director