

**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  
KOREX DON VALLEY ULC**

**APPLICANT**

---

**EIGHTH REPORT OF IRA SMITH TRUSTEE & RECEIVER INC.**

**VOLUME 4**

**IN ITS CAPACITY AS COURT-APPOINTED MONITOR OF  
KOREX DON VALLEY ULC**

**DATED JULY 20, 2009**

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**IRA SMITH TRUSTEE & RECEIVER INC.**  
Suite 6-167 Applewood Crescent  
Concord, ON L4K 4K7

Ira Smith MBA CA-CIRP

P: 905.738.4167

F: 905.738.9848

E: [ira@irasmithinc.com](mailto:ira@irasmithinc.com)

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**EIGHTH REPORT OF  
IRA SMITH TRUSTEE & RECEIVER INC.  
VOLUME 4**

**IN ITS CAPACITY AS COURT-APPOINTED MONITOR OF  
KOREX DON VALLEY ULC**

**DATED JULY 20, 2009**

**EXHIBITS**

Unilever June 30, 2009 information request listing	“A”
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Korex counsel email dated July 10, 2009	“C”
Unilever counsel letter dated July 16, 2009	“D”
Korex counsel email reply dated July 17, 2009	“E”
Unilever counsel email dated July 20, 2009	“F”
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**ONTARIO  
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**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT  
ACT  
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**IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT  
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**EIGHTH REPORT OF IRA SMITH TRUSTEE & RECEIVER INC.  
VOLUME 4**

**IN ITS CAPACITY AS COURT-APPOINTED MONITOR OF  
KOREX DON VALLEY ULC**

**DATED JULY 20, 2009**

**1.0 INTRODUCTION**

This Eighth Report Volume 4 ("**Volume 4**") is filed by Ira Smith Trustee & Receiver Inc. ("**ISI**") in its capacity as court-appointed monitor (the "**Monitor**") of all of the assets, undertakings and properties of Korex Don Valley ULC ("**Korex**" or the "**Company**").

All background information regarding this administration and prior Court attendances and Orders is contained in the Monitor's prior Reports to Court.

## **2.0 PURPOSE OF VOLUME 4**

At the last Court attendance on June 30, 2009, the Monitor provided its Eighth Report to Court, Volume 3 in connection with the assignability of the premises lease of the Company. The Honourable Mr. Justice Wilton-Siegel adjourned all matters related to Korex and extended the stay of proceedings until July 22, 2009 to permit UL Canada Inc. (“**Unilever**”) time to meet with Korex representatives in order to review financial information and the Company assets to allow Unilever calculate the purchase price of the Korex fixed assets in accordance with the formula (the “**Purchase Price Amount**”) provided for in an asset purchase agreement, dated May 21, 2002 (the “**Purchase Agreement**”) in the event of the lifting of the stay and a termination of the premises lease as deposed by Mr. J.D. Coyne, Unilever General Counsel, in his affidavit dated June 25, 2009.

The Monitor, in Volume 2 of this Eighth Report, provided this Honourable Court with the Monitor’s calculation of the Purchase Price Amount. Counsel for the Monitor advised this Honourable Court that the Monitor would assist both Unilever and Korex in facilitating Unilever’s information requests.

The purpose of this Volume 4 is to advise this Honourable Court of the activities that have transpired since June 30, 2009 in connection with the due diligence completed by Unilever and the Monitor understands of the current position of both Unilever and Korex.

## **3.0 UNILEVER INFORMATION REQUEST**

In the afternoon of June 30, Unilever’s legal counsel, Mr. G. Hall of McCarthy Tetrault LLP, sent an email to the parties requesting specific information. Attached as **Exhibit “A”** is a copy of the information request. At that time, Korex’s CFO, Mr. J. Bojkovski, was on vacation, and

Korex and Unilever agreed that the information would be provided upon his return from vacation. In the interim the Monitor provided to Unilever such information from Korex in its possession to respond to certain questions from Unilever. Korex agreed to supply the balance of the requested information. Some of this information could only practically be obtained from the Korex files on a site visit which was to be scheduled.

On July 7, 2009, Unilever advised that they wished to arrange for a site visit on both July 13 and 14, for access to the Korex information available on site, and to both inspect and appraise the Korex fixed assets. A request for an inspection was always known of and agreed to by all parties. An appraisal is not required for the calculation of the Purchase Price Amount and had not been previously agreed to. Attached as **Exhibit "B"** is a copy of two emails from counsel for Unilever concerning primarily the appraisal issue.

A great deal of communication transpired over this issue, including a July 10, 2009 conference call between legal counsel for Korex and Unilever, the Monitor and the Monitor's legal counsel. At the conclusion of the conference call, Korex's position was that it had cooperated with Unilever by providing, or having the Monitor provide Unilever with the information requested and agreeing to the site visit for an inspection of books, records and the fixed assets. It was unclear at the conclusion of the conference call as to whether Unilever representatives were prepared to attend at the Korex premises without an appraiser. Notwithstanding the foregoing, early in the same afternoon, Unilever advised that its representatives would attend on July 13 and 14, 2009 to obtain the required information regarding the fixed assets available on site without an appraiser.

#### 4.0 ATTENDANCE AT KOREX – JULY 13, 2009

On July 13, 2009, in order to allow for Unilever to obtain the additional information it required to calculate the Purchase Price Amount, representatives of Korex, Unilever and the Monitor attended at the Factory Lands.

On Monday July 13<sup>th</sup> the following people were present at the KDV facility:

*For Korex*

John Bojkovski, CMA – CFO  
Grace Kwong - Financial Analyst  
Stephen Tovee, P.Eng. - Engineering Manager  
Dave Durette - Vendor Scheduler  
Dave Armstrong - Employee Relations Mgr.  
Jeff Wiseman - Quality Manager

*For Unilever*

Faisal Ahmed -Unilever Corporate Finance  
Jim Moses - Unilever Supply Chain Analyst  
Duncan Gray -Unilever Supply Chain Finance

*For the Monitor*

Stanley Sugar, CA

The Unilever representatives were also working that day with a representative of Comerica Bank's privately appointed Receiver on certain inventory issues.

During this attendance on July 13, 2009, Unilever representatives requested to review various project files in relation to Korex fixed asset additions, and requested the Monitor to run certain Korex fixed asset listings, sorted by project, in order to allow for ease of review. The project files and additional listings were provided to Unilever. After they reviewed this documentation,

they selected various fixed assets and fixed asset groups for physical inspection. The Monitor attended on the inspection and all fixed assets selected by Unilever were located in the Korex facility.

At the conclusion of the physical inspection, all representatives met in the Korex conference room. As Mr. Gray did not attend the physical inspection, the results were provided to him, and Korex and the Monitor provided Mr. Gray the opportunity to review the listings and when the Unilever representatives reattended at Korex the next day, to advise which further fixed assets he wished to inspect. Mr. Gray made his selections and the Monitor asked the Unilever representatives if they required any additional information in order to perform their calculation of the Purchase Price Amount. They advised they had all the information they required and the meeting ended for that day.

On the morning of July 14, Unilever advised Korex and the Monitor that it did not need to re-attend at the Korex premises that day. As the July 14 date had already been agreed to, Korex requested the Monitor to attend, as it wished to provide the Monitor with further information concerning a specific fixed asset category, being fixed assets that had not yet been capitalized due to a lack of accounting department personnel. The Monitor was always aware of Korex general ledger account number 11125500 Assets in Progress, but had always omitted this category of fixed assets in its reporting, including Volume 2 of this Eighth Report, so its value was not included in any prior reports or estimates of value.

Working with the Korex representative, the project files and a physical inspection of those fixed assets, the Monitor came to the conclusion that on a net book value basis, there were additional fixed assets with an original cost of \$530,125, with a now calculated accumulated depreciation as at May 31, 2009 of \$115,751, for an increase in the net book value of the Korex fixed assets



subject to the Purchase Agreement of \$414,374 as at May 31, 2009 (\$530,125 - \$115,751). For the purpose of determining the Purchase Price amount, the amount calculated by the Monitor and contained in Volume 2 of this Eighth Report would therefore have to increase by this amount. As well, additional depreciation expense would have to be taken if the ultimate Purchase Price Amount was to be calculated at a date after May 31, 2009, being the date used in Volume 2 of this Eighth Report.

## 5.0 SUBSEQUENT EVENTS

On July 16, 2009, Mr. Hall wrote to Korex's legal counsel and copied the Monitor and others with the correspondence (the "**July 16 letter**"). As stated in the letter, it was further to the July 10 conference call, and an email issued by Korex's legal counsel on July 10 after the conference call. Attached hereto as **Exhibits "C" and "D"**, is a copy of the July 10 email and the July 16 letter.

The Monitor views the July 16 letter as a fair articulation of the facts at that point in time. On July 17, 2009, Korex's legal counsel replied to the July 16 letter by email. Attached hereto as **Exhibit "E"** is a copy of that email.

In the fourth full paragraph on page 2 of the July 16 letter (being the second paragraph under the heading "Advancing the matter"), Mr. Hall states:

"It appears that good progress is being made on the formula price, although the accounting information provided so far has indicated a much higher level of capital expenditures than Unilever had previously been aware of. Unilever is appreciative of the accounting information which Korex has provided to date, and remains optimistic that it will be possible to agree on the formula price by the time of our next court appearance on July 22, 2009."

The Monitor has not heard any further from either Unilever or Korex on either

Unilever's calculation of the Purchase Price Amount, or any agreement between the parties on

that amount. Therefore, today, Mr. Mitra sent an email to Mr. Hall requesting that he advise the Monitor on Unilever's calculation of the Purchase Price Amount, for inclusion in this Volume 4.

Attached as **Exhibit "F"** is a copy of the response from Mr. Hall.

## **6.0 OTHER MATTERS**

In the event this Honourable Court directs that a sales process be conducted in order to maximize the value of the Korex assets not subject to the Comerica Bank security for the benefit of the creditors, the Monitor does not currently have a funding arrangement in place to fund the professional fees and costs associated with such a sales process. On July 17, 2009, the Monitor received a copy of a draft term sheet from Korex Canada Company to Korex, to provide additional debtor-in-possession financing in the form of the credit facility to Korex, to allow for such a sales process. Attached hereto as **Exhibit "G"** is a copy of that term sheet.

The Monitor has not reviewed the term sheet in detail. However, today, the Monitor did make an initial inquiry of TCL Asset Group Inc. ("**TCL**"), who has provided to the Monitor its auction proposal dated June 19, 2009, included in Volume 2 to this Eighth Report. TCL has advised the Monitor that it is prepared to advance to the Monitor, against the net minimum guarantee, if TCL is retained to liquidate the fixed assets in accordance with its June 19, 2009 liquidation proposal, the amount of \$500,000. This would appear to provide the Monitor with a source for sufficient liquidity to conduct a sales process, in addition to the Korex Canada Company source of funds for Korex.

**7.0 CONCLUSION**

Based on the above, the Monitor is of the conclusion that Unilever has been provided with all necessary information in order for them to perform the calculation of the Purchase Price Amount. Based upon the information provided to the Monitor by Korex, the Purchase Price Amount is \$414,374 higher than reported in Volume 2 of the Eighth Report as at May 31, 2009.

\*\*

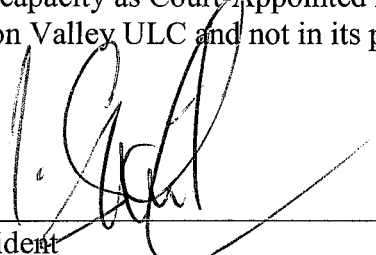
\*\*

\*\*

All of which is respectfully submitted at Toronto, Ontario this 20<sup>th</sup> day of July, 2009.

**IRA SMITH TRUSTEE & RECEIVER INC.**  
solely in its capacity as Court Appointed Monitor  
of Korex Don Valley ULC and not in its personal Capacity

Per:

  
\_\_\_\_\_  
President

5582260.3

Attached is **Exhibit “A”**

Referred to in the

EIGHTH REPORT OF IRA SMITH TRUSTEE & RECEIVER INC.  
IN ITS CAPACITY AS COURT-APPOINTED MONITOR OF  
KOREX DON VALLEY ULC

VOLUME 4

DATED JULY 20, 2009

# **Korex Additional Capital Expenditure**

## **List of records required**

### **1. Trial Balance –**

- a. Aug 2002 ( Start of business)
- b. Dec 2002
- c. Dec 2003
- d. Dec 2004
- e. Dec 2005
- f. Dec 2006
- g. Dec 2007
- h. Aug 2008
- i. Dec 2008

### **2. Details of GBV, Acc Dep. and NBV From Aug 2002 to May 2009**

- a. Sub-Ledger details by Asset from Aug 2002 to May 2009
- b. Location of assets
- c. Korex Capitalization policy
- d. Korex Capitalization process

### **3. Sub-Ledger Details of Capital Additions (by Asset Sub-Class) and Disposals from Aug 2002 to May 2009**

#### **Asset Sub-Class**

1. Building and building improvements
2. Machinery & Equipment
3. Furniture & Fixtures
4. Computer Hardware & Software
5. Moulds & Dies

### **4. Invoice copies for Capital additions with proof of payment**

### **5. Details of physical counts of these assets – Aug 2002 to May 2009**

### **6. Details of any assets written off in books – Aug 2002 to May 2009**

Attached is **Exhibit “B”**

Referred to in the

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IN ITS CAPACITY AS COURT-APPOINTED MONITOR OF  
KOREX DON VALLEY ULC

VOLUME 4

DATED JULY 20, 2009

**From:** Meredith, Heather L. [<mailto:HMEREDITH@MCCARTHY.CA>]  
**Sent:** July 9, 2009 10:23 AM  
**To:** Friedman, Susan; Sanj Mitra  
**Cc:** Richard Epstein; Hall, Geoff R.; Darlington, Bruce; Ira Smith; Stanley Sugar; [leslie@millercanfield.com](mailto:leslie@millercanfield.com); [Marentette@MillerCanfield.com](mailto:Marentette@MillerCanfield.com); [sfuntig@funtig.com](mailto:sfuntig@funtig.com)  
**Subject:** RE: Korex - requested information re capital expenditures

Susan and Sanj,

You asked for clarification on my e-mail of yesterday. To be clear, there has been no exercise of the option by Unilever. Indeed, the entire purpose of the adjournment has been to determine the actual value of that option to allow all parties to proceed on an informed basis. As you know, Unilever's ability to exercise the option only arises if the CCAA stay is lifted and the contract terminated. Mr. Coyne's affidavit spoke to Unilever's intentions if the CCAA stay is lifted and no other stay is put in place. That has not happened yet and Unilever is entitled to conduct this due diligence to ascertain the actual value of materials it would purchase under the option.

In fact, the need for that due diligence appeared to have been understood at the last court appearance at which time both the monitor and Korex gave an unequivocal commitment to provide Unilever with answers to its (pared down) information request and access to the facility. Again, that was the purpose of the adjournment. At this point, we acknowledge receipt of some answers from the Monitor provided last night, which Unilever is now reviewing; however, there remain outstanding answers to the information request (most significantly the trial balance from Korex, which we expect to be provided as data direct from Korex' financial system and not data downloaded to spreadsheets) and we have not been given access to the facility.

With the July 22nd return date quickly approaching, we again ask for confirmation that access will be provided on July 13th and 14th to evaluate the capital expenditure records, examine and count the DEFI and SNUGGLE inventory, and appraise the equipment. We also look forward to receiving the remaining answers to the Unilever information request as soon as possible.

Regards,

Heather

**Heather Meredith**

Associate

Bankruptcy & Restructuring

T:/Tél : 416-601-8342

F:/Télec : 416-868-0673

E:/Courriel : [hmeredith@mccarthy.ca](mailto:hmeredith@mccarthy.ca)

McCarthy Tétrault LLP / S.E.N.C.R.L., s.r.l.

Suite 5300

Toronto Dominion Bank Tower

Toronto, Ontario

Canada M5K 1E6

[www.mccarthy.ca](http://www.mccarthy.ca)

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PENSEZ À L'ENVIRONNEMENT avant d'imprimer ce message.

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**From:** Meredith, Heather L. [<mailto:HMEREDITH@MCCARTHY.CA>]

**Sent:** Wednesday, July 08, 2009 8:51 AM

**To:** Sanj Mitra; Darlington, Bruce; [ira@irasmithinc.com](mailto:ira@irasmithinc.com); [stan@irasmithinc.com](mailto:stan@irasmithinc.com); [leslie@millercanfield.com](mailto:leslie@millercanfield.com); [Marentette@MillerCanfield.com](mailto:Marentette@MillerCanfield.com); [JMcMahon@kirwinpartners.com](mailto:JMcMahon@kirwinpartners.com); [sfuntig@funtig.com](mailto:sfuntig@funtig.com)

**Cc:** Richard Epstein; Hall, Geoff R.; [stan.sugar@sympatico.ca](mailto:stan.sugar@sympatico.ca); Friedman, Susan; [sandy@penslercapital.com](mailto:sandy@penslercapital.com); [John.Bojkovski@korex-ca.com](mailto:John.Bojkovski@korex-ca.com)

**Subject:** RE: Korex - requested information re capital expenditures

Sanj and Bruce,

The appraisal is to ascertain the value of the equipment that Unilever would be purchasing pursuant to the formula. It is plainly relevant to Unilever's consideration of whether to go forward with the purchase under the formula to understand that actual value of the items it would be purchasing. In any event, Unilever has proposed two days to complete its assessment, including the appraisal. This will not delay matters.

Please confirm that we can schedule July 13th and 14th for these purposes.

Heather

**Heather Meredith**

Associate

Bankruptcy & Restructuring

T:/Tél : 416-601-8342

F:/Télé : 416-868-0673

E:/Courriel : [hmeredith@mccarthy.ca](mailto:hmeredith@mccarthy.ca)

McCarthy Tétrault LLP / S.E.N.C.R.L., s.r.l.

Suite 5300

Toronto Dominion Bank Tower

Toronto, Ontario

Canada M5K 1E6

[www.mccarthy.ca](http://www.mccarthy.ca)

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Attached is **Exhibit “C”**

Referred to in the

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IN ITS CAPACITY AS COURT-APPOINTED MONITOR OF  
KOREX DON VALLEY ULC

VOLUME 4

DATED JULY 20, 2009

**From:** Friedman, Susan [mailto:sfriedman@davis.ca]  
**Sent:** July 10, 2009 12:02 PM  
**To:** GHALL@MCCARTHY.CA; HMEREDITH@MCCARTHY.CA  
**Cc:** Sanj Mitra; Sam Babe; Darlington, Bruce; Marentette, Stephen R.; leslie@millercanfield.com; russellm@caleywray.com; Jesse Kugler; Ira Smith; Stanley Sugar; FRANK, Robert I.; kkraft@heenana.ca; misrag@caleywray.com; Richard Epstein  
**Subject:** Monday and Tuesday

To make it crystal clear and certain:

1. Korex Don Valley ("KDV") has given Unilever the information that is necessary to perform the mathematical computation that is the formula specified in section 7.8(g) of the Asset Purchase Agreement ("APA"). As a result, Unilever can determine the purchase price payable if the stay is lifted by the court and Unilever then terminates the lease and exercises its option, as John Coyne committed to the court that Unilever would do. If Unilever thinks information is missing, please tell me, so KDV can address the issue quickly.
2. KDV will give a representative of Unilever access to the plant on Monday, so that he or she can make sure that the equipment that Unilever committed to buy is actually present. If Unilever chooses to send a person for this purpose on Monday, please let me or Bruce Darlington know and please be sure that the person sent to conduct the inspection has documentation identifying him or her as a Unilever employee.
3. KDV will not give an appraiser appointed by Unilever access to the plant to appraise the value of the equipment, because an appraisal is not contemplated by and is irrelevant to the calculation of the purchase price pursuant to section 7.8(g) of the APA. Unilever's counsel has said that even if the stay is lifted, Unilever may not terminate the lease and exercise its option pursuant to section 7.8(g) of the APA, but may make an offer to buy the equipment for a different price, and we assume that means at a lesser price. Further, Unilever's counsel has said that Unilever may then choose to sell the equipment to someone else, again we presume this means at a profit. KDV's position is that there is no reason why Unilever should be given preferential treatment in a sale process, or the opportunity to make an offer in advance of all other potential purchasers. In an event, that is not the purpose of the present adjournment.
4. KDV is content to have the DEFI and Snuggle inventory counts done on Monday and Tuesday of next week, provided that we get enough notice that Unilever intends to proceed with this process to permit John Bojkovski to line up employees to assist. We understand that the Receiver also wants to send a representative, so please let us know as soon as possible.

Please advise as to Unilever's intentions as soon as you can.

Susan

**Susan E. Friedman**  
**Partner**  
**DAVIS LLP | Legal Advisors since 1892**

T 416.365.3503  
F 416.777.7415  
sfriedman@davis.ca

1 First Canadian Place, Suite 5600  
PO Box 367  
100 King Street West  
Toronto, ON M5X 1E2

**[www.davis.ca](http://www.davis.ca)**

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VOLUME 4

DATED JULY 20, 2009

Barristers & Solicitors  
Patent & Trade-mark Agents

McCarthy Tétrault

McCarthy Tétrault LLP  
Box 48, Suite 5300  
Toronto Dominion Bank Tower  
Toronto, ON M5K 1E6  
Canada  
Telephone: 416 362-1812  
Facsimile: 416 868-0673  
mccarthy.ca

**Geoff R. Hall**  
**Direct Line:** 416 601-7856  
**Direct Fax:** 416 868-0673  
**E-Mail:** ghall@mccarthy.ca

July 16, 2009

**VIA EMAIL**

Susan E. Friedman  
Bruce Darlington  
Davis LLP  
1 First Canadian Place  
100 King Street West  
Suite 5600, P.O. Box 367  
Toronto ON M5X 1E2

Dear Ms Friedman and Mr. Darlington:

**Re: Korex Don Valley ULC**

**Introduction**

I write further to our conference call on July 10, 2009, in which all parties also participated. I also write further to Ms Friedman's e-mail of 12:02 p.m. on July 10, 2009.

**Unilever's position**

Section 7.8(g) of the asset purchase agreement (the "APA") between Unilever Canada Inc. ("Unilever") and Korex Don Valley ULC ("Korex") requires written notice of Unilever's exercise of its option. Unilever has given no such notice. Indeed, it cannot do so because of the CCAA stay. Therefore Unilever has to date not exercised its option.

In his affidavit sworn June 25, 2009, John D. Coyne set out Unilever's intention based on the information available to it at the time, namely to terminate the lease and exercise the option under section 7.8(g) of the APA if the current CCAA stay terminates and no stay is put in its place to block Unilever's intended course of action.

Unilever's intention is of course subject to certain informational requirements that any reasonable commercial party would insist upon, namely (i) confirmation of the price at which the acquisition is to be made pursuant to the formula in section 7.8(g) of the APA; and (ii) due diligence to confirm the existence and condition of the goods which are to be the subject of the acquisition. The point is so obvious that there was no need to state it expressly in the affidavit. It would be commercially absurd for a party to commit to buying equipment at an

July 16, 2009

- 2 - Susan E. Friedman and Bruce Darlington

unknown price when it is unknown what condition the equipment is in, and when the very existence of the equipment has not even been confirmed.

The obviousness of the point is illustrated by the fact that Justice Wilton-Siegel adjourned the proceedings in order to allow the parties to try to come to an agreement on the formula price and to allow Unilever to undertake due diligence with respect to the equipment. The adjournment was on consent of Korex and all other parties. If it were the case, as Korex and certain other parties are now contending for the first time, that Unilever had irrevocably committed itself to purchasing the equipment regardless of the price and regardless of its condition or even its existence, there would have been no need for such an adjournment.

Until there is agreement on what the formula price is and Unilever has had an opportunity to conduct due diligence to confirm the existence and condition of the equipment, it will not be possible for Unilever to be any more definite as to its intentions.

**Advancing the matter**

To advance the matter, it is necessary to come to a landing on the formula price and for Unilever to undertake its due diligence.

It appears that good progress is being made on the formula price, although the accounting information provided so far has indicated a much higher level of capital expenditures than Unilever had previously been aware of. Unilever is appreciative of the accounting information which Korex has provided to date, and remains optimistic that it will be possible to agree on the formula price by the time of our next court appearance on July 22, 2009.

Unfortunately, the same cannot be said with respect to due diligence on the equipment. In order to complete this due diligence, and have the benefit of a full information base upon which to make a decision as to whether to exercise the option, Unilever wanted to send four individuals in to Korex's premises on July 13 and 14, 2009, one of whom is a qualified equipment appraiser. In our call on July 10, 2009, Korex refused to allow access to the appraiser.

With respect, the basis for Korex's position was difficult to understand, particularly given that the appraisal which Unilever proposed would take place at the same time as the other due diligence that Korex agreed to permit, and therefore would take no additional time or effort on the part of Korex or its principals nor would it delay these proceedings in any way. There was some reference to unfairness in a sales process. Since there is no sales process under way or (to my knowledge) even contemplated, it is hard to see why this would be a concern. In any event, if there is to be a sales process and if there is a legitimate concern about its fairness, there is undoubtedly some way to address that concern without impeding the current effort to get Unilever the information it needs to be able to decide whether to exercise its option.

July 16, 2009

- 3 -

Susan E. Friedman and Bruce Darlington

Despite Korex's position, Unilever elected to proceed with the due diligence review by the other three individuals who are being permitted access. However, Korex's refusal to allow access by the appraiser makes it much, much more difficult to get to a point where Unilever can make a final decision on the exercise of its option right.

**Corrections to Ms. Friedman's e-mail**

Ms. Friedman's e-mail states: "Unilever's counsel has said that even if the stay is lifted, Unilever may not terminate the lease and exercise its option pursuant to section 7.8(g) of the APA, but may make an offer to buy the equipment for a different price, and we assume that means at a lesser price. Further, Unilever's counsel has said that Unilever may then choose to sell the equipment to someone else, again we presume this means at a profit." This statement is incorrect and reflects erroneous assumptions.

Given the age of the equipment and the conditions under which Unilever believes it has been operated, Unilever has no expectation whatsoever that it will be able to flip the equipment for a profit. One of the reasons Unilever wants an appraiser to look at the equipment is to determine how much of a *loss* it is likely to incur if it acquires the equipment and then disposes of it. The inability to quantify this loss makes it very difficult for Unilever to make a decision as to the exercise of its option.

**Conclusion**

Korex's decision to refuse access to Unilever's appraiser is disappointing and counterproductive. Unless such access is provided, it is difficult to imagine how the proceedings will be any more advanced on July 22, 2009 than they were when the matter was adjourned on June 30, 2009. I therefore urge Korex to reconsider its position and allow Unilever's appraiser access at the earliest possible time.

Yours very truly,



Geoff R. Hall  
GRH/kt

- c: Sanjeev Mitra and Sam Babe, counsel for the Monitor  
Ira Smith and Stan Sugar, Ira Smith Trustee & Receiver Inc.  
John D. Leslie and Steve Marentette, counsel for Comerica Bank  
Gail Mishra, Micheil M. Russell and Jess Kugler, counsel for the Communications,  
Energy and Paperworkers Union of Canada, Local 132-0  
Rob Frank, counsel for Shell Energy North America (Canada), Inc.  
Ken Kraft, counsel for Cepsa Chimie Béancour Inc.

#520052

Attached is **Exhibit “E”**

Referred to in the

EIGHTH REPORT OF IRA SMITH TRUSTEE & RECEIVER INC.  
IN ITS CAPACITY AS COURT-APPOINTED MONITOR OF  
KOREX DON VALLEY ULC

VOLUME 4

DATED JULY 20, 2009

**Ira Smith**

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**From:** Meffe, Rose [[rmeffe@davis.ca](mailto:rmeffe@davis.ca)] on behalf of Darlington, Bruce [[bdarlington@davis.ca](mailto:bdarlington@davis.ca)]  
**Sent:** July 17, 2009 9:51 AM  
**To:** Hall, Geoff R.; Friedman, Susan; Sam Babe; Darlington, Bruce; Marentette, Stephen R.; [leslie@millercanfield.com](mailto:leslie@millercanfield.com); [russellm@caleywrap.com](mailto:russellm@caleywrap.com); Jesse Kugler; Ira Smith; Stanley Sugar; FRANK, Robert I.; [kkraft@heenanc.ca](mailto:kkraft@heenanc.ca); [misrag@caleywrap.com](mailto:misrag@caleywrap.com); Mitra, Sanjeev; Lisa La Horey  
**Cc:** Meredith, Heather L.  
**Subject:** RE: Korex Don Valley ULC

Geoff:

Thank you for your letter dated July 16, 2009. We agree that this matter was adjourned to permit Unilever to confirm the purchase price under the formula contained in section 7.8(g) of the APA. The material you filed was clear on its face and you confirmed during the attendance on June 30, 2009 that it was your client's intention to exercise its option to purchase under this formula conditional only on the stay being lifted. The adjournment was granted for the purpose of permitting your client a reasonable opportunity to confirm that various factors under the formula that determined the purchase price. It is understandable that Unilever was not prepared to accept the figures as presented by KDV or the Monitor as being determinative without conducting its own verification. Further, it was reasonable for Unilever to request an opportunity to confirm that all the items of equipment were still present at the Korex plant, which was the reason given to the court for Unilever's attendance there. Nothing was said to his Honour about the conduct of an appraisal.

What is difficult to understand is your current position that the adjournment was granted to permit Unilever to determine if it had any intention to purchase KDV's fixed assets at all and if so at what price. Had that intention been made clear on June 30, 2009, it would have been and is now KDV's position that to permit Unilever this unique advantageous and exclusive opportunity to submit an offer to purchase KDV's fixed assets would be unfair to the stakeholders of KDV. It is KDV's position that if Unilever intends to submit an offer to purchase KDV's fixed assets on any basis other than pursuant to the APA as expressly and clearly stated in Mr. Coyne's affidavit, then it should do so as part of a full blown sales process so as to ensure, to a reasonable extent, that the best possible price is obtained.

We look forward to receipt of your confirmation that your client intends, as clearly stated in Mr. Coyne's affidavit, to exercise its option under the APA to purchase the fixed assets if the stay is lifted and to confirm its understanding as to the purchase price determined in accordance with the formula in the APA. Failing which, it is our position that either KDV should be permitted to file the Plan as drafted or, subject to the availability of financing, an appropriate sales process should be initiated.

Regards, Bruce

---

**From:** Hall, Geoff R. [<mailto:GHALL@MCCARTHY.CA>]  
**Sent:** Thursday, July 16, 2009 11:57 AM  
**To:** Friedman, Susan; Sam Babe; Darlington, Bruce; Marentette, Stephen R.; [leslie@millercanfield.com](mailto:leslie@millercanfield.com); [russellm@caleywrap.com](mailto:russellm@caleywrap.com); Jesse Kugler; [ira@irasmithinc.com](mailto:ira@irasmithinc.com); [stan@irasmithinc.com](mailto:stan@irasmithinc.com); FRANK, Robert I.; [kkraft@heenanc.ca](mailto:kkraft@heenanc.ca); [misrag@caleywrap.com](mailto:misrag@caleywrap.com); Mitra, Sanjeev  
**Cc:** Meredith, Heather L.  
**Subject:** Korex Don Valley ULC

Please see the attached correspondence.

Geoff R. Hall  
 McCarthy Tétraut LLP  
 (416) 601-7856

=====  
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Attached is **Exhibit “F”**

Referred to in the

EIGHTH REPORT OF IRA SMITH TRUSTEE & RECEIVER INC.  
IN ITS CAPACITY AS COURT-APPOINTED MONITOR OF  
KOREX DON VALLEY ULC

VOLUME 4

DATED JULY 20, 2009

**Ira Smith**

---

**From:** Hall, Geoff R. [[GHALL@MCCARTHY.CA](mailto:GHALL@MCCARTHY.CA)]  
**Sent:** July 20, 2009 3:24 PM  
**To:** Sanj Mitra  
**Cc:** Ira Smith; Meredith, Heather L.  
**Subject:** RE: Korex Don Valley ULC

Unilever's position was set out in my letter dated July 16, 2009. I am not able to add anything.

Geoff R. Hall  
 McCarthy Tétrault LLP  
 (416) 601-7856

---

**From:** Sanj Mitra [<mailto:smitra@airdberlis.com>]  
**Sent:** Monday, July 20, 2009 11:09 AM  
**To:** Hall, Geoff R.  
**Cc:** [ira@irasmithinc.com](mailto:ira@irasmithinc.com)  
**Subject:** FW: Korex Don Valley ULC

Geoff, we are in the process of writing Volume 4 of the Eighth report of the Monitor.

I was wondering if your client could confirm its number for the formula price so that we could at least confirm we have agreement on that point. As I understand things, the Debtor has cooperated and provided all information requested. I have not seen any further request other than the request for the appraisal. Please let us know at your earliest convenience as we are looking to finalize the report by end of day.

Thanks

Sanj Mitra  
 Aird & Berlis LLP  
 Brookfield Place  
 Suite 1800,  
 181 Bay Street,  
 Toronto, Ontario  
 M5J 2T9  
 Tel.:416.865.3085  
 Fax.:416.863.1515  
[Email:smitra@airdberlis.com](mailto:smitra@airdberlis.com)

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**From:** Hall, Geoff R. [<mailto:GHALL@MCCARTHY.CA>]  
**Sent:** July 16, 2009 11:57 AM  
**To:** Friedman, Susan; Sam Babe; Darlington, Bruce; Marentette, Stephen R.; [leslie@millercanfield.com](mailto:leslie@millercanfield.com); [russellm@caleywayray.com](mailto:russellm@caleywayray.com); Jesse Kugler; [ira@irasmithinc.com](mailto:ira@irasmithinc.com); [stan@irasmithinc.com](mailto:stan@irasmithinc.com); FRANK, Robert I.;

[kkraft@heenan.ca](mailto:kkraft@heenan.ca); [misrag@caleywray.com](mailto:misrag@caleywray.com); Sanj Mitra

**Cc:** Meredith, Heather L.

**Subject:** Korex Don Valley ULC

Please see the attached correspondence.

Geoff R. Hall  
McCarthy Tétrault LLP  
(416) 601-7856

=====  
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Attached is **Exhibit “G”**

Referred to in the

EIGHTH REPORT OF IRA SMITH TRUSTEE & RECEIVER INC.  
IN ITS CAPACITY AS COURT-APPOINTED MONITOR OF  
KOREX DON VALLEY ULC

VOLUME 4

DATED JULY 20, 2009

**KOREX CANADA COMPANY**

78 Titan Rd  
ETOBICOKE, Ontario  
M8Z 2J8

July 22, 2009

Korex Don Valley ULC  
21 Don Valley Parkway  
Toronto, Ontario M4M 3P2  
CANADA

**Attention: Mr. John Bojkovski**

Dear Sirs:

**Re: KCC DIP Facility**

This agreement sets out the terms on which Korex Canada Company ("KCC") is prepared to provide additional debtor-in-possession financing in the form of the credit facility described below to Korex Don Valley ULC ("KDV") in connection with the application by KDV under the *Companies' Creditors Arrangement Act* (Canada) (the "CCAA") and the court ordered sales process thereunder. The terms and conditions contained herein replace and supersede the terms and conditions in the letter agreement dated May 5, 2009 from KCC to KDV. The Ontario Superior Court of Justice is referred to herein as the "Court" and the initial order dated February 6, 2009 made by the Court is referred to herein as the "Initial Order".

This agreement and all security and other documents granted pursuant to or in connection herewith, all as amended, supplemented, otherwise modified or replaced from time to time, are collectively called the "DIP Credit Documentation".

**Type of Facility**

KCC shall establish for KDV a revolving operating credit facility (the "DIP Facility") in Canadian currency in the maximum outstanding principal amount of Cdn. \$1,000,000 (the "Maximum Amount").

## **Purpose**

The DIP Facility shall provide KDV with working capital to carry on business and to finance the court-ordered sales process, including payment of the fees and disbursements provided for in the Initial Order.

## **Advances**

KCC may, at its sole discretion, make advances by way of loan under the DIP Facility from time to time upon request by KDV. The DIP Facility shall be revolving in that KDV will be entitled to obtain, repay and re-obtain loans thereunder from time to time.

All advances under the DIP Facility shall be made in accordance with the terms hereof and any orders, including the Initial Order (collectively, the "CCAA Orders"), made from time to time by the Court in the proceedings commenced in respect of KDV under the CCAA (the "CCAA Proceedings").

## **Availability**

KDV shall be entitled to request advances under the DIP Facility following satisfaction (or waiver by KCC) of each of the conditions precedent noted below.

In no event shall the aggregate outstanding principal amount owing by KDV under the DIP Facility exceed the Maximum Amount. If any such excess occurs, KDV shall promptly repay such excess.

## **Repayment**

KDV shall pay to KCC, on demand by KCC, all present and future indebtedness now or hereafter owing by KDV to KCC pursuant to or in respect of this agreement or the DIP Facility (collectively, the "DIP Liabilities"). Unless demand for payment is made by KCC prior to the implementation of the plan to be formulated by KDV under the CCAA, KDV shall pay all DIP Liabilities to KCC at the time of the implementation of such plan or in the event of a sale of some portion or all of the remaining assets, as soon as practically following the completion of such sale.

## **Interest**

KDV shall pay to KCC, both before and after demand, default and judgment, interest on the outstanding daily balance of all DIP Liabilities (including interest on overdue interest) at the rate of eighteen (18%) per cent per annum calculated and payable monthly not in advance on the last day of each month. . If the Canadian Consumer price Index increase in any twelve month period exceeds 5% the interest rate will be increased by the amount the Canadian consumer price index increase exceeds 5%.

### **Additional Remuneration**

KCC agrees to provide KDV assistance in conducting and completing the court-ordered sales process in order to assist in maximizing the recoveries of all stakeholders in KDV and in return, KDV agrees to pay or cause to be paid to KCC 10% of the total gross sale proceeds derived from the sale of KDV's assets in excess of \$1.5 million,

### **Arrangement Fee**

KDV has paid to KCC, a non-refundable arrangement fee in the amount of \$15,000 and shall pay a further non-refundable arrangement fee in the amount of \$15,000 from the first advance hereunder made after the date hereof.

### **Additional Payments for Withholding Taxes and Other Similar Taxes**

KDV shall withhold and pay when due all withholding taxes and other similar taxes payable in respect of interest, fees or other amounts paid by KDV with respect to the DIP Facility and KDV shall pay to KCC all additional amounts required by KCC from time to time with respect thereto so that the amounts actually received by KCC are not less than the amounts KCC would have received if no such withholding taxes or other similar taxes had been withheld, paid or payable by KDV.

### **Security**

Payment of all DIP Liabilities shall be secured by a Court ordered charge (the "Court Ordered Charge") over all present and future property, assets and undertaking of KDV.

The Court Ordered Charge, the KDV DIP Security (collectively, the "DIP Security") shall rank in priority to all other mortgages, charges, security agreements and other encumbrances affecting all present and future property, assets and undertakings of KDV



except for the Administration Charge and Director's Charge (as defined by the Initial Order) and the security held by Comerica Bank over the accounts receivable and inventory currently owned by KDV. . ( This will not relieve Comerica of its responsibility for the Administrative expenses up and including April 31, 2009 and all other charges and expenses incurred in connection with realizing on collateral charged by the security held by Comerica).

KCC shall not, while the CCAA Proceedings continue, enforce any KDV DIP Security against KDV or KDV's property without leave of the Court.

### **Conditions Precedent to Advances**

The obligation of KCC to make any advance hereunder shall be subject to the following conditions precedent (which are solely for the benefit of, and may be waived in whole or in part by KCC):

- (a) the CCAA Proceedings shall be subsisting at the time the requested advance is made;
- (b) the Initial Order made by the Court in connection with CCAA Proceedings shall have been amended to:
  - (i) approved the DIP Facility; and
  - (ii) created the Court Ordered Charge;and be satisfactory to KCC;
- (c) KCC shall have received, in form and substance satisfactory to KCC, to the extent required by KCC:
  - (i) the KDV DIP Security;
  - (ii) all notes, directors' resolution certificates, other corporate documentation, legal opinions and other documents required by KCC with respect to the DIP Facility;

- (iii) an agreement with Comerica Bank setting out the respective priorities of KCC and Comerica Bank on terms and conditions satisfactory to KCC, in its sole discretion;
- (d) KDV shall have complied with all CCAA Orders and all its respective obligations to KCC;
- (e) KCC shall have approved KDV's request for such advance and the use by KDV of such advance; and
- (f) KCC shall be satisfied on an ongoing basis, in its sole discretion, that KDV's protection under the CCAA Orders is not under any material threat.

### **Covenants by KDV**

KDV shall, at KCC's request:

1. deliver to KCC and its advisors all financial and other information requested by them from time to time;
2. provide KCC and its advisors with access to the assets of KDV;; and
3. reimburse KCC for all reasonable out-of-pocket expenses (including reasonable legal fees and disbursements) incurred by KCC in connection with the DIP Facilities (including the expenses incurred in obtaining all security and other documents required hereunder).

### **Evidence of DIP Liabilities**

KCC's books and records showing the amount of advances made by KCC to KDV and the amount of the DIP Liabilities at any time owing to KCC shall be prima facie evidence thereof in the absence of mathematical error.

### **Further Assurances**

KDV shall, from time to time, do, execute and deliver, or cause to be done, executed and delivered, all such further acts, documents and things as KCC may reasonably request to

give effect to any DIP Credit Documentation or to preserve, perfect, protect or maintain the DIP Security.

### **Governing Law**

This agreement and, unless expressly provided otherwise therein, the other DIP Credit Documentation, contemplated herein, shall be governed by and construed in accordance with the laws of Ontario.

### **Entire Agreement; Conflicts**

This agreement and the other DIP Credit Documentation constitute the entire agreement among the parties hereto relating to the subject matter hereof.

### **Severability**

Any provision in any DIP Credit Documentation which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions thereof or affecting the validity or enforceability of such provisions in any other jurisdiction.

Please indicate your acceptance of the foregoing by signing below.

Yours truly,

**KOREX CANADA COMPANY**

Per: \_\_\_\_\_

Name:

Title:

**TO: KOREX CANADA COMPANY**

Korex Don Valley ULC hereby agrees to the foregoing and, without limitation, agrees to deliver to KCC promptly at KCC's request, in form and substance satisfactory to KCC, each of the KDV DIP Security, and the other DIP Credit Documentation required by KCC.

**KOREX DON VALLEY ULC**

Per: \_\_\_\_\_

Name:

Title:

**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  
KOREX DON VALLEY ULC**

**APPLICANT**

**Court File No. 08-CL-7925**

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

**EIGHTH REPORT OF  
IRA SMITH TRUSTEE & RECEIVER INC.  
VOLUME 4  
IN ITS CAPACITY AS COURT-APPOINTED MONITOR OF  
KOREX DON VALLEY ULC  
DATED JULY 20, 2009**

**IRA SMITH TRUSTEE & RECEIVER INC.  
Suite 6-167 Applewood Crescent  
Concord, Ontario L4K 4K7**

**Ira Smith, MBA CA•CIRP  
Tel: 905.738.4167  
Fax: 905.738.9848**