

CLAIMS PROCESS

1. **THIS COURT ORDERS** that, for purposes of the Claims Process only, the following terms shall have the following meanings:

- (a) “**Administrative Charge**” has the meaning given in the Initial Order;
- (b) “**Business Day**” means a day, other than a Saturday or a Sunday, on which banks are generally open for business in Toronto, Ontario;
- (c) “**Claim**” means any right or claim of any Person, whether arising by statute, at law or in equity, now or hereafter existing or hereafter arising, whether or not asserted, in connection with any indebtedness, liability, obligation, right or thing of any nature or kind whatsoever, whether or not reduced to judgment, whether liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present or future, known or unknown, foreseen or unforeseen, or arising by guarantee, surety or otherwise, and whether or not such liability is executory or anticipatory in nature, including any right of any Person to advance a claim for contribution, subrogation or indemnity or otherwise with respect to any matter, action, cause or chose in action, whether existing at present or commenced in the future, which right, claim, indebtedness, liability, right or obligation is based in whole or in part on facts existing or any act or omission, transaction or dealing or other occurrence existing or taking place on or prior to the Claims Bar Date or Construction Lien Claims Bar Date, as applicable, and, without limitation, including any claim arising from or relating to any indebtedness, obligation, right, thing or liability of any kind of the Applicant, howsoever arising, including pursuant to the terms of, or the breach, or termination, repudiation, rescission or cancellation of, any contract, arrangement or agreement or by reason of the commission of a tort, any breach of duty (including any legal, statutory, equitable or fiduciary duty), any right of ownership of or title to any property or assets or any trust or deemed trust (statutory, express, implied, resulting, constructive or otherwise), and, in relation to any of the above, including any interest that may accrue thereon for which

there is an obligation to pay, and costs which such Person would be entitled to receive; provided, however, that a "Claim" shall not include an Excluded Claim;

- (d) "**Claimant**" means a Person who has asserted a D&O Claim, a Post-Filing Claim or a Construction Lien Claim or could have asserted a D&O Claim, Post-Filing Claim or Construction Lien Claim but for the provisions herein concerning the Claims Bar Date or the Construction Lien Claims Bar Date, as applicable;
- (e) "**Claims Bar Date**" means 5:00 p.m. Toronto time on March 19, 2010;
- (f) "**Claim Package**" means the document package to be delivered by the Monitor pursuant to paragraph 4 hereof, which shall include a copy of this Order, without attachments, an Instruction Letter, a Proof of Claim and such other materials as the Monitor may consider necessary or appropriate;
- (g) "**Claims Process**" means the process for identifying, determining and/or barring a D&O Claim, Post-Filing Claim or Construction Lien Claim established by this Order;
- (h) "**Construction Lien Claim**" means the construction lien Claim of a Construction Lien Claimant;
- (i) "**Construction Lien Claimant**" means each of Terrain Group, Jacques Whitford Stantec Limited and Golder Associates Ltd.;
- (j) "**Construction Lien Claims Bar Date**" means 5:00 p.m. Toronto time on March 5, 2010;
- (k) "**Court**" means the Ontario Superior Court of Justice;
- (l) "**D&O Claim**" means any Claim of any Person against a Director and/or Officer of the Applicant which is indemnified by the Applicant pursuant to paragraph 19 of the Initial Order, being any Claim against a Director or Officer for:

- (a) outstanding and future wages, salaries, employee and pension benefits, vacation pay, bonuses and expenses payable on or after August 12, 2009, whether incurred prior to or after that date, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;
 - (i) 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;
 - (ii) goods and services or other applicable sales taxes required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant, but only where such sales taxes are accrued or collected after August 12, 2009, or where such sales taxes were accrued or collected prior to August 12, 2009, but not required to be remitted until on or after August 12, 2009; and
 - (iii) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the business by the Applicant.
- (m) **“Director”** means anyone who is, was, or may be deemed to have been or has been, or referred to as, a director of the Applicant;
 - (n) **“Excluded Claims”** means the following claims, whether liquidated, unliquidated, fixed, contingent, matured or unmatured, disputed, undisputed, legal, equitable secured, unsecured, present, future, known or unknown, of whatsoever nature or kind and howsoever arising:

- (a) claims against the Applicant, other than a Construction Lien Claim or a Post-Filing Claim, including without limitation, any claims relating to the provision of goods and services provided before August 12, 2009;
 - (b) subject to the provision above, claims against any Person other than a Director or Officer in relation to a D&O Claim;
 - (c) claims, costs, charges and expenses claimed against a Director or Officer that are not indemnified under paragraph 19 of the Initial Order, including without limitation, by reason of any Director or Officer having actively participated in any breach of any related fiduciary duties or having been grossly negligent or guilty of wilful misconduct, none of which claims constitutes a "D&O Claim" pursuant to this Order;
 - (d) any Claim arising as a result of the termination or repudiation of any contract, agreement or lease pursuant to the Initial Order; and
 - (e) any Claim secured by the Administrative Charge, the KERP Charge or the Marathon Charge.
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- (o) "**Instruction Letter**" means the instruction letter to Claimants regarding completion of a Proof of Claim, substantially in the form attached hereto as Schedule "B";
 - (p) "**KERP Charge**" has the meaning given in the Order of this Court dated August 25, 2009, as amended by the Order of this Court dated November 30, 2009;
 - (q) "**Marathon Charge**" has the meaning given in the Order of this Court dated August 25, 2009, as amended by the Order of this Court dated November 30, 2009;
 - (r) "**Notice of Acceptance**" means a written notice delivered by the Monitor to a Claimant advising of the acceptance of a D&O Claim, Post-Filing Claim or Construction Lien Claim in its entirety;

- (s) “**Notice of Dispute**” means the notice to be delivered by a Claimant, in accordance with paragraphs 15 and 16 hereof, substantially in the form attached hereto as Schedule “E”;
- (t) “**Notice of Revision or Disallowance**” means the notice to be delivered by the Monitor to a Claimant, in accordance with paragraph 13 hereof, which shall be substantially in the form attached hereto as Schedule “D”;
- (u) “**Officer**” means anyone who is, was, or may be deemed to have been or has been, or referred to as, an officer of the Applicant;
- (v) “**Person**” means any individual, corporation, limited or unlimited liability company, general or limited partnership, association, trust, unincorporated organization, joint venture, government or any agency, officer or instrumentality thereof or any other entity;
- (w) “**Post-Filing Claim**” means any Claim of any Person against the Applicant that arose from:
 - (i) the provision of authorized goods and services provided, or
 - (ii) otherwise incurred in the ordinary course of business,on or after August 12, 2009, through to and including the Claims Bar Date;
- (x) “**Proof of Claim**” means the form to be completed and filed by a Claimant setting forth its purported Claim in accordance with paragraph 5 hereof, which shall be substantially in the form attached hereto as Schedule “C”;
- (y) “**Public Notice**” means the notice of this Claims Process to be published in accordance with paragraphs 2 and 3 hereof, substantially in the form of the notice attached hereto as Schedule “A”;
- (z) “**Secured Lenders**” means, collectively, HSH Nordbank AG, New York Branch, as administrative agent and collateral agent on behalf of itself, Bayerische

Landesbank, New York Branch and Union Bank of California, Canada Branch (n/k/a Union Bank, Canada Branch) and Lehman Brothers Holdings Inc.

Publication of Notice

2. **THIS COURT ORDERS** that the Monitor shall take all reasonable steps to cause the Public Notice to be published in each of the Toronto Globe and Mail (National Edition) and La Presse within five (5) Business Days after the date hereof, or as soon as practicable thereafter for a period of two (2) Business Days.
3. **THIS COURT ORDERS** that the Monitor shall cause the Public Notice to be posted on the Monitor's website as soon as practicable after the date of this Order until ten (10) Business Days after the Claims Bar Date.

Claim Package

4. **THIS COURT ORDERS** that the Monitor shall send a copy of the Claim Package, by prepaid ordinary mail to the last known address of such Person as shown in the books and records of the Applicant to:
 - (a) each Person:
 - (i) reflected on the Applicant's accounts payable register as being a creditor of the Applicant as at the date of this Order;
 - (ii) identified in a schedule provided by the Applicant as being an employee or independent contractor performing services for the Applicant as at August 12, 2009; and
 - (iii) identified to the Monitor by the Applicant as at the date of this Order, as having an existing or threatened litigation claim against the Applicant;
 - (b) the government agencies described on Schedule "F" attached hereto;
 - (c) the Construction Lien Claimants;

- (d) all Persons who have notified the Monitor in writing of a potential D&O Claim or Post-Filing Claim;
- (e) any Person who makes a written request for a Claim Package of the Monitor at least three Business Days prior to the Claims Bar Date; and
- (f) the latest Service List in these proceedings, provided by the Applicant, by electronic transmission.

The Monitor shall be entitled to rely upon schedules and records provided to it by the Applicant as to the Persons entitled to receive the Claim Package and the Monitor shall have no liability with respect to its failure to send a Claim Package to any Person.

Claims Bar Date

5. **THIS COURT ORDERS** that:

- (a) any Claimant wishing to assert a D&O Claim or Post-Filing Claim shall deliver a Proof of Claim to the Monitor so that it is received by the Monitor on or before the Claims Bar Date; and
- (b) any Construction Lien Claimants wishing to assert a Construction Lien Claim shall deliver a Proof of Claim to the Monitor so that it is received by the Monitor on or before the Construction Lien Claims Bar Date.

6. **THIS COURT ORDERS** that any Claimant wishing to assert a D&O Claim or Post-Filing Claim that does not deliver a Proof of Claim to the Monitor on or before the Claims Bar Date shall be and is hereby forever barred from making or enforcing a D&O Claim against any Director or Officer or a Post-Filing Claim and that any such D&O Claim and Post-Filing Claim (each, an “**Unasserted Claim**”) shall be forever extinguished, barred and released and all such Claimants shall be deemed to have fully and finally released and discharged all Unasserted Claims against each and every Director and Officer and the Applicant.

7. **THIS COURT ORDERS** that any Construction Lien Claimant that does not deliver a Proof of Claim to the Monitor on or before the Construction Lien Claims Bar Date shall be and is hereby forever barred from making or enforcing its Construction Lien Claim and that any such Construction Lien Claim (each, an “**Unasserted Constructed Lien Claim**”) shall be forever extinguished, barred and released and such Construction Lien Claimant shall be deemed to have fully and finally released and discharged all Unasserted Construction Lien Claims against the Applicant.

Review Process

8. **THIS COURT ORDERS** that the Monitor is hereby authorized and directed to use reasonable discretion as to the adequacy of compliance as to the manner in which Proofs of Claim are completed and executed and may, where it is satisfied that a Proof of Claim has been adequately described or proven, waive strict compliance with the requirements of this Order as to completion and execution of the Proof of Claim.
9. **THIS COURT ORDERS** that any D&O Claim, Post-Filing Claim or Construction Lien Claim denominated in any currency other than Canadian dollars shall, for the purposes of this Claims Process, be converted to and constitute obligations in Canadian dollars, such calculation to be done by the Monitor using the Bank of Canada noon spot rate on the date of this Order.
10. **THIS COURT ORDERS** that the Monitor shall maintain a list of all D&O Claims, Post-Filing Claims and Construction Lien Claims received by it, including the name of the Claimant, the amount of the D&O Claim, Post-Filing Claim and Construction Lien Claim, the nature and particulars of the D&O Claim, Post-filing Claim and Construction Lien Claim and, in the case of a D&O Claim, the name of any Director or Officer in respect of whom the Proof of Claim is made and whether the D&O Claim appears or does not appear to give rise to a Claim secured by the D&O Charge. The Monitor shall provide a copy of such summary to the Secured Lenders and copies of such summary and the Proofs of Claim it has received to the Applicant and any applicable Director or Officer.

Review of and Response to D&O Claims and Post-Filing Claims

11. **THIS COURT ORDERS** that the Monitor, with the assistance of the Applicant, shall review each Proof of Claim received by the Claims Bar Date and Construction Lien Claims Bar Date, as applicable, and, subject to this Order and any further Order of this Court, shall either accept, revise or disallow the amount claimed in each such Proof of Claim. The Monitor shall consult with the Secured Lenders in respect of any Proof of Claim above \$5,000.
12. **THIS COURT ORDERS** that if the Monitor, with the assistance of the Applicant, accepts a D&O Claim, Post-Filing Claim or Construction Lien Claim asserted in its entirety, the Monitor shall send a Notice of Acceptance to the applicable Claimant.
13. **THIS COURT ORDERS** that if the Monitor, with the assistance of the Applicant, disputes a D&O Claim, Post -Filing Claim or Construction Lien Claim asserted, the Monitor may attempt to consensually resolve the amount of such D&O Claim, Post-Filing Claim or Construction Lien Claim with the Claimant and the Applicant and, in the case of a D&O Claim, the applicable Director or Officer, and/or send a Notice of Revision or Disallowance to the Claimant in relation to such disputed claim by no later than March 26, 2010 in the case of a D&O Claim and Post-Filing Claim, and no later than March 12, 2010 in the case of a Construction Lien Claim. The Monitor shall consult with the Secured Lenders in this regard in respect of any D&O Claim, Post-Filing Claim or Construction Lien Claim above \$5,000.
14. **THIS COURT ORDERS** that the Monitor will provide a copy of any D&O Claim filed to the applicable Director and Officer, or such Director or Officer's counsel, and shall allow such Director or Officer or counsel to review and provide comments in respect of any Notice of Acceptance or Notice of Revision or Disallowance that the Monitor intends to deliver to a Claimant in respect of such D&O Claim and prior to the delivery thereof.

Notices of Dispute

15. **THIS COURT ORDERS** that any applicable Claimant may dispute the revision or disallowance of a D&O Claim, Post-Filing Claim or Construction Lien Claim by the

Monitor, in which case the D&O Claim, Post-Filing Claim or Construction Lien Claim shall be resolved or determined in accordance with this Order and any subsequent Orders of this Court.

16. **THIS COURT ORDERS** that any Claimant who intends to dispute a Notice of Revision or Disallowance, shall deliver a Notice of Dispute to the Monitor within ten (10) Business Days of the date of receipt of the Notice of Revision or Disallowance.
17. **THIS COURT ORDERS** that, upon receipt of a Notice of Dispute, the Monitor may attempt to consensually resolve the amount of the D&O Claim, Post-Filing Claim or Construction Lien Claim with the Claimant and the Applicant and, in the case of a D&O Claim, the applicable Director or Officer. In the case of a D&O Claim, Post-Filing Claim or Construction Lien Claim above \$5,000, the Monitor shall consult with the Secured Lenders in this regard.
18. **THIS COURT ORDERS** that if a Claimant does not deliver a Notice of Dispute in accordance with the provisions of and timeframes provided by paragraph 16 hereof, then the Notice of Revision or Disallowance shall be deemed to be accepted as final and binding on the Claimant, and the Claimant shall be and is hereby forever barred from making or enforcing the D&O Claim, Post-Filing Claim or Construction Lien Claim, as applicable, to the extent that it exceeds the amount, if any, accepted in the Notice of Revision or Disallowance (the "**Excess Claim**") and the Excess Claim shall be forever extinguished, barred and released, and the Claimant shall be deemed to have fully and finally released and discharged the Excess Claim.

Reporting to the Court on Claims Process

19. **THIS COURT ORDERS** that the Monitor shall report to this Court regarding the outcome of the Claims Process particularizing, among other things, the number and value of the Proofs of Claim submitted, a summary of the D&O Claims, Post-Filing Claims and Construction Lien Claims that were accepted, revised and disallowed, the nature of the disputes that exist and whether, in the case of D&O Claims, such claims that were filed would appear to be or not to be Claims secured by the Directors' Charge.

20. **THIS COURT ORDERS** that the Monitor or the Applicant shall serve a motion by April 16, 2010, for the determination of all unresolved, disputed D&O Claims, Post-Filing Claims and Construction Lien Claims.

Notices and Communications

21. **THIS COURT ORDERS** that, except as set out in this Order, any notice, form or other communication to be given under this Claims Process shall be in writing, and where applicable, in substantially the form provided for in this Order. Such notice or other communication will be sufficiently given to a Claimant if delivered by prepaid ordinary mail, courier, delivery, facsimile transmission or electronic mail to the address, facsimile number or e-mail address for such Claimant as may be recorded in the books and records of the Applicant or in the Claimant's Proof of Claim, or to such other address, facsimile number or e-mail address as such Claimant may request by notice to the Monitor given in accordance with this Order. Any such notice or other communication:
- (a) if given by prepaid ordinary mail, shall be deemed received on the third Business Day after mailing within Ontario, the fifth Business Day after mailing within Canada and the eighth Business Day after mailing, internationally;
 - (b) if given by courier or delivery shall be deemed received on the next Business Day following dispatch; and
 - (c) if given by facsimile transmission or electronic mail before 5:00 p.m. on a Business Day shall be deemed received on such Business Day and, if given by facsimile transmissions or electronic mail after 5:00 p.m. on a Business Day, shall be deemed received on the following Business Day.
22. **THIS COURT ORDERS** that any notice, form or other communication to be given under this Claims Process to the Applicant or the Monitor shall be in writing and, where applicable, substantially in the form provided for in this Order and will be sufficiently given only if delivered by courier, personal delivery or facsimile transmission addressed to:

(a) in the case of the Monitor:

KPMG Inc., as Monitor of Interwind Corp.,
Suite 4600
Bay Adelaide Centre
333 Bay Street
Toronto, Ontario M5H 2S5

Attention: Todd Martin / Jenny Poulos
Fax No.: (416) 777-3364
Telephone: (416) 777-8245 / (416) 777-3495
Email: interwind@kpmg.ca

(b) in the case of the Applicant:

Interwind Corp.
c/o Goodmans LLP
Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, Ontario M5H 2S7

Attention: Robert Chadwick
Telephone: (416) 597-4285
Fax No.: (416) 979-1234

Any such notice or other communication delivered to the Monitor or the Applicant shall be deemed to be received only upon actual receipt thereof during normal business hours on a Business Day, or if delivered outside of normal business hours, on the next Business Day.

23. **THIS COURT ORDERS** that if during any period during which notices or other communications are being given pursuant to this Claims Process a postal strike or postal work stoppage of general application should occur, such notices or other communications sent by ordinary mail and then not received shall not, absent further order of this Court, be effective and notices and other communications given hereunder during the course of any such postal strike or work stoppage of general application shall only be effective if given by courier, personal delivery or electronic mail or facsimile transmission in accordance with this Claims Process.

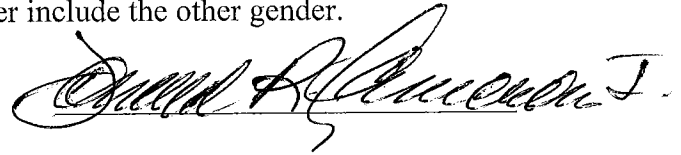
24. **THIS COURT ORDERS** that nothing in this Claims Process shall prejudice the rights and remedies of any Director or Officer, under any existing Directors and Officers insurance policy or prevent or bar any Person from seeking recourse against or payment from any Director's and/or Officer's liability insurance policy or policies that may exist to protect or indemnify any Director and/or Officer whether such recourse or payment is sought directly by the Claimant from the insurer or derivatively through the Director or Officer or of the Applicant. Provided, however, that nothing in this Order shall create any rights in favour of such Person under any policies of insurance nor shall anything in this Order limit, remove, modify or alter any defence to such claim available to the insurer pursuant to the provisions of any insurance policy or at law.

General Provisions

25. **THIS COURT ORDERS** that the provisions of this Order concerning D&O Claims, Post-Filing Claims and Construction Lien Claims including, without limitation, the provisions concerning the Claims Bar Date and Construction Lien Claims Bar Date and their effect, and the determinations of the Monitor, the Applicant and the Court in respect thereof, shall survive the bankruptcy or receivership of the Applicant, and shall be binding upon any trustee in bankruptcy or receiver appointed in respect of the Applicant.
26. **THIS COURT ORDERS** that the Monitor, the Applicant, any Director or Officer in the case of a D&O Claim only, and any other affected Person may apply to the Court for advice and directions, and have standing to be heard, with respect to any dispute regarding the acceptance, revision, disallowance or settlement of any D&O Claim, Post-Filing Claim or Construction Lien Claim.
27. **THIS COURT ORDERS** that the Monitor and the Applicant may apply to this Court for advice and direction in connection with the discharge or variation of their respective powers and duties under or otherwise in relation to this Order.
28. **THIS COURT HEREBY REQUESTS** the aid and recognition (including assistance pursuant to section 17 of the CCAA, as applicable) of any court or any judicial, regulatory or administrative body in any province or territory of Canada and any judicial, regulatory or administrative tribunal or other court constituted pursuant to the Parliament

of Canada or the legislature of any province or any court or any judicial, regulatory or administrative body of the United States and of any other nation or state to act in aid of and to be complementary to this Court in carrying out the terms of this Order.

29. **THIS COURT ORDERS** that references in this Order to the singular include the plural, to the plural include the singular and to any gender include the other gender.



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

FEB 18 2010

PER / PAR: JSN

Joanne Nicoara
Registrar, Superior Court of Justice