

**IT IS SO ORDERED.**

**Dated: 11:10 AM October 26 2006**



**UNITED STATES BANKRUPTCY COURT  
 NORTHERN DISTRICT OF OHIO  
 EASTERN DIVISION**

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In re:	:	
	:	Case No. 06-51848
CEP HOLDINGS, LLC, <u>et al.</u> , <sup>1</sup>	:	(Jointly Administered)
	:	
Debtors.	:	Chapter 11
	:	
	:	Honorable Marilyn Shea-Stonum
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**ORDER (A) ESTABLISHING BIDDING PROCEDURES  
 FOR THE DEBTORS' TUSCALOOSA, ALABAMA SALE FACILITY;  
 (B) SETTING DATE FOR AUCTION AND HEARING ON APPROVAL  
 OF SALE OF SUCH FACILITY; AND (C) APPROVING FORM OF NOTICE**

Upon the motion (the "**Motion**"), dated October 4, 2006, of the above captioned debtors and debtors-in-possession for an for Order (A) Granting Authority for the Sale of Assets Pursuant to § 363(B); (B) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection with such Sale and Determining and

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<sup>1</sup> The Debtors include: CEP Holdings, LLC, Creative Engineered Polymer Products, LLC and Thermoplastics Acquisition, LLC.

Adjudicating Cure Amounts with respect to such Contracts and Leases Pursuant to § 365; (C) Establishing Bidding Procedures; (D) Setting Date for Auction and Hearing on Approval of Sale of Assets; and (E) Approving Form of Notice (the “**Sale Motion**”); and the Court<sup>2</sup> having reviewed the Sale Motion and having heard evidence presented by the Debtors regarding the relief requested in the Sale Motion at a hearing before the Court held on October 24, 2006 (the “**Hearing**”); and the Court finding that (a) it has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (b) this is a core proceeding pursuant to 28 U.S.C. §157(b)(2), (c) venue of this Chapter 11 case in this district is proper pursuant to 28 U.S.C. §§1408 and 1409, and (d) service and notice of the Sale Motion and of the Hearing was good and sufficient under the circumstances; and the Court having further determined that the legal and factual basis set forth in the Sale Motion and on the record at the Hearing establish just cause for the relief granted herein; and it appearing that the relief requested in the Sale Motion is in the best interest of the Debtors’ estates, their creditors and other parties in interest.

IT IS HEREBY FOUND AND DETERMINED THAT:

A. The Sale Motion involves the proposed sale of substantially all of the assets (collectively, the “**Assets**”) of the Debtors, including the Debtors’ assets (the “**Tuscaloosa Assets**”) related to its Tuscaloosa, Alabama facility (the “**Tuscaloosa Facility**”), as more fully described in the Sale Motion.

B. Given Debtors’ financial condition, a prompt sale of the Tuscaloosa Assets is critical in order to maximize value of the Tuscaloosa Assets for the Debtors’ estates.

C. Debtors have demonstrated a compelling and sound business justification for authorizing the Tuscaloosa Bidding Procedures (as defined herein), solely as set forth and

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<sup>2</sup> All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Motion.

defined below. The Tuscaloosa Bidding Procedures are fair, reasonable and appropriate, and are designed to maximize the recovery on the Assets.

IT IS HEREBY ORDERED THAT:

1. The Motion is granted in part as set forth below.
2. A hearing (the “**Sale Hearing**”) with respect to the sale of the Tuscaloosa Assets as requested in the Sale Motion shall be held before this Court on November 30, 2006 at 10:00 a.m. (eastern time).
3. The following procedures (the “**Tuscaloosa Bidding Procedures**”) are hereby approved:

**Bidder Qualifications**

4. Only qualified bidders (the “**Qualified Bidders**”) may submit an offer to purchase the Tuscaloosa Facility, including any executory contracts or unexpired leases to be assumed in connection with the purchase of such Facility. Persons or entities who wish to become Qualified Bidders (“**Proposed Qualified Bidders**”) with respect to the Tuscaloosa Facility must submit an offer to purchase the Tuscaloosa Facility on or before 5:00 p.m. (eastern time) on November 27, 2006 (the “**Bid Deadline**”), and must comply with each of the following requirements for its bid to be considered by the Debtors (a “**Qualified Bid**”):

- a. Provide the Debtors and NL Ventures with evidence that, in the reasonable discretion of the Debtors, establishes that the Proposed Qualified Bidder has sufficient financial ability to close and consummate a sale on the terms set forth in its bid and that the Proposed Qualified Bidder will be able to provide adequate assurance of future performance with respect to all executory contracts or unexpired leases to be assigned with the Tuscaloosa Facility pursuant to the Form Purchase Agreement (as defined below). NL Ventures reserves its right to oppose the ability of any Proposed Qualified Bidder to provide adequate assurance of future performance. Any Proposed Qualified Bidder will provide Debtors, Debtors’ counsel or NL Ventures, as the case may be, within twenty-four (24) hours after Debtors’ or NL Ventures’ request, with financial statements and other documents requested by the Debtors or NL Ventures

relating to its business activities and its ability to perform in the event that its bid is accepted;

b. Unless previously delivered to Debtors, execute and deliver to the Debtors a confidentiality agreement (the “**Confidentiality Agreement**”), to be provided by the Debtors prior to conducting any due diligence or obtaining information considered confidential by Debtors;

c. The Debtors will provide all interested parties with a form asset purchase agreement (the “**Form Purchase Agreement**”). All Qualified Bidders will submit an executed Form Purchase Agreement (a “**Proposed Purchase Agreement**”), marked to show all changes from the Form Purchase Agreement and include with such submission all schedules and exhibits with respect thereto;

d. Provide that the transactions under the Proposed Purchased Agreement must close on or before December 19, 2006, provided, however, that in the event the proposed Purchaser does not assume all Visteon purchase orders and related agreements; a closing on the transaction may not occur until after Visteon has completed its resourcing process and exited the Tuscaloosa Facility;

e. Tender a good faith deposit in the form of an electronic wire transfer of immediately available funds, or a bank or certified check, in the amount of 10% of the bid amount contained in the Proposed Purchase Agreement to counsel to the Debtors (or, in the case of a wire transfer of immediately available funds, to an account designated by Debtors’ counsel), which will be deposited and maintained in a segregated escrow account subject to the terms hereof. If a Proposed Qualified Bidder becomes the Successful Bidder (as defined below), its deposit will be applied towards the amount of the Successful Bid (as defined below);

f. Provide a written statement that (i) it agrees, and intends its bid to comply, with the Bidding Procedures and the terms of this Order, as well as with such other terms and procedures as may be imposed by the Court or the Debtors on the Tuscaloosa Facility Auction, at or prior to the Tuscaloosa Facility Auction; (ii) its bid (as the same may be enhanced at the Tuscaloosa Facility Auction) will be irrevocable through the later to occur of the conclusion of the Sale Hearing or December 20, 2006 if it is the Successful Bidder or is determined by the Debtors have submitted the second or third highest bid (as augmented at the auction); (iii) that it believes in good faith that its bid constitutes a Qualified Bid; (iv) its deposit will be treated in accordance with the provisions of this Order; and (v) its bid (as the same may be enhanced at the Tuscaloosa Facility Auction) is not subject to any due diligence or financing conditions; and

g. All deposits of Qualified Bidders will be held by the Debtors and returned without interest on the earlier to occur of (x) the date of closing of the transactions under the Successful Bidder’s Proposed Purchase Agreement and (y) the date the Debtors abandon the sales process contemplated hereby. Any deposit tendered by a Qualified Bidder that becomes the Successful Bidder will be (i) forfeited to the Debtors (without prejudice to any other remedies available to the Debtors for such breach) in the event that such Successful Bidder breaches its obligations under its

Proposed Purchase Agreement, or (ii) returned without interest to such Successful Bidder in the event that such Successful Bidder's Proposed Purchase Agreement is terminated other than by reason of any breach by such Successful Bidder of any of its obligations in connection therewith.

### **Delivery of Qualified Bids**

5. Any Qualified Bids for the Tuscaloosa Facility will be on terms and conditions at least as favorable (as determined by Debtors in their reasonable business judgment) as the terms of the Form Purchase Agreement.

6. All Qualified Bids will be in writing (and will be accompanied by a redline of such bid against the Form Purchase Agreement). Copies of such bids (including accompanying redlined Form Purchase Agreement) shall be served on and received by the Bid

Deadline by:

a. the Debtors' counsel, Joseph F. Hutchinson, Jr. and Thomas M. Wearsch, Baker & Hostetler LLP, 3200 National City Center, 1900 East Ninth Street, Cleveland, Ohio 44114;

b. the Debtors' financial advisor and investment banker, James Stephenson, Glass & Associates, c/o CEP Holdings, LLC, 3650 W. Market St., Akron, Ohio 44333;

c. counsel to the Creditors Committee – Mark Freedlander and Sally Edison, McGuire Woods, Dominion Tower, 625 Liberty Avenue, 23rd Floor, Pittsburgh, Pennsylvania 15222-3142;

d. counsel to the Lender – Jeremy Downs and Shira Isenberg, Goldberg Kohn, 55 East Monroe, Suite 3700, Chicago, Illinois 60603;

e. counsel to Visteon – Michael Hammer, Dickinson Wright PLLC, 301 East Liberty, Suite 500, Ann Arbor, MI 48104;

f. counsel to NL Ventures - Michael Parker, Fulbright & Jaworski L.L.P., 300 Convent Street, Suite 2200, San Antonio, Texas 78205; and

g. the United States Trustee – Maria Giannirakis, Office of the United States Trustee, Howard M. Metzenbaum U.S. Courthouse, 201 Superior Ave., East, Suite 441, Cleveland, Ohio 44114.

7. Only Qualified Bidders that submit Qualified Bids will be entitled to participate in the Tuscaloosa Auction.

## **Confidentiality**

8. The Debtors will not provide access to any information about the Tuscaloosa Facility or their business related thereto to any person or entity who has not signed a Confidentiality Agreement.

## **The Tuscaloosa Auction**

9. The Debtors will conduct the auction for the Tuscaloosa Facility (the “**Tuscaloosa Auction**”) at the offices of Debtors’ counsel, Baker & Hostetler LLP, 3200 National City Center, 1900 East Ninth Street, Cleveland, Ohio 44114, on November 29, 2006 at 9:00 a.m. (eastern time). At the beginning of the Tuscaloosa Auction, the Debtors will explain the rules of the auction to all bidders in attendance. The Debtors will then answer all reasonable questions from Qualified Bidders. Bidding at the Tuscaloosa Auction will commence with the highest or otherwise best Qualified Bid (as determined by the Debtors in their reasonable business judgment) or Stalking Horse Bid (as discussed below), as the case may be, and bidding will continue in increments announced by the Debtors at the beginning of the Auction, until all Qualified Bidders have made their final offers.

10. The Debtors will have the sole right and discretion to conduct the Auction in the manner the Debtors determine is best and most advantageous method to maximize value of the Tuscaloosa Facility. At the conclusion of the Tuscaloosa Auction, the Debtors in consultation with Lender will announce their determination as to the highest or otherwise best bid for the Tuscaloosa Facility (the “**Successful Bid**”), and the Qualified Bidder who submitted the Qualified Bid will become the “**Successful Bidder**.”

11. The Debtors, in consultation with their financial advisor, shall have the sole right and discretion to conduct the auction in the manner the Debtors reasonably determine is most likely to maximize the value of the Tuscaloosa Facility under the circumstances. At the conclusion of the Tuscaloosa Auction, and after consultation with Lender, the Debtors shall announce their determination as to the highest or otherwise best bid for the Tuscaloosa Facility (the “**Successful Bid**”), and the Qualified Bidder in respect thereof will become the “**Successful Bidder**”. In consultation with the Lender, the Debtors shall have the right to determine which Qualified Bid, if any, is the highest or otherwise best bid at the Tuscaloosa Auction. The Debtors have the right to take into account any and all matters that the Debtors, in the sound exercise of their business judgment, deem appropriate to take into account in making the determination as to which bid is the highest and otherwise best bid, subject to the terms of this Order. Formal acceptance of a Successful Bid, however, shall not occur unless and until the Court enters an order (a “**Sale Order**”) in form and substance satisfactory to the Debtors and the Successful Bidder approving the Successful Bid and authorizing the Debtors to consummate the sale to the Successful Bidder in accordance with the Purchase Agreement or the Overbid Purchase Agreement, as the case may be, following the conclusion of the Tuscaloosa Hearing.

12. Upon the failure to consummate the sale of the Tuscaloosa Facility to the Successful Bidder in accordance with its Proposed Purchase Agreement because of a breach or failure to consummate the sale by such Successful Bidder, the Debtors will (with the prior written consent of Lender) contact the bidder having the next highest or otherwise best Qualified Bid, if any, which bidder will be designated as the Successful Bidder and required to buy such facility under its Proposed Purchase Agreement. If the second highest bidder fails to close, then the Debtors will require the third highest bidder, if any, to close as the Successful Bidder. If a

Successful Bidder fails to close, the Debtors, with the consent of Lender, may decline to declare a new Successful Bidder and may conduct a new auction.

13. Nothing herein shall prohibit Lender from submitting a credit bid pursuant to Section 363(k) and Lender shall be deemed a Qualified Bidder.

### **Stalking Horse Purchasers**

14. The Debtors reserve the right to designate a “Stalking Horse Purchaser” with respect to the Tuscaloosa Facility on terms and conditions as the Debtors and Lender deem acceptable, including, but not limited to, reasonable overbid protection, reasonable expense reimbursement and/or breakup fee, and/or any other customary buyer protection. The following procedure will be employed for the designation of a Stalking Horse Purchaser:

- a. The Debtors will file a motion (a “**Designation Motion**”) which attaches an executed Proposed Purchase Agreement with a proposed Stalking Horse Purchaser which motion will seek approval of the stalking horse status of the proposed Stalking Horse Purchaser including any buyer protection contained in the Proposed Purchase Agreement;
- b. If no party files an objection to the Designation Motion within five days of the filing of the Designation Motion and the Court has no objection to same, the Court will enter an order approving the proposed Stalking Horse Purchase as a Stalking Horse Purchaser with respect to the Tuscaloosa Facility;
- c. The Debtors reserve the right to request in the Designation Motion that the Tuscaloosa Auction and Sale Hearing with respect to the Tuscaloosa Facility occur earlier than what is requested herein;
- d. The Stalking Horse Purchaser shall automatically be deemed a Qualified Bidder if the Debtor determines that the Stalking Horse Purchaser otherwise meets the qualifications set forth herein; and
- e. All other procedures set forth herein regarding bidding procedure will be applicable to any such auction and hearing.



## Notice

15. Pursuant to Bankruptcy Rules 2002, 6004, 6006 and 9014, the Debtors are authorized to give notice of the Sale Motion, the Tuscaloosa Auction, and the Sale Hearing by mailing a copy of the Sale Auction and Sale Hearing Notice in substantially the form of Exhibit A to the Sale Motion by first class mail, to the following (collectively, the “**Notice Parties**”):

- a. All creditors (if any) asserting a security interest, lien, encumbrance or other interest against all or any portion of the Tuscaloosa Facility;
- b. The Office of the United States Trustee;
- c. All applicable federal, state and local taxing and environmental authorities;
- d. All parties who have requested notice in these Chapter 11 cases;
- e. All other parties on the General Service List maintained in this case;
- f. All other persons or entities who in the last six months have expressed an interest in writing in acquiring the Tuscaloosa Facility, if any; and
- g. all counterparties to any executory contract or Lease to be assigned under the Proposed Purchase Agreement.

16. The Debtors will serve the Sale Auction and Sale Hearing Notice on the Notice Parties within five days or earlier after entry of this Order, by first-class mail, postage prepaid. The Sale Auction and Sale Hearing Notice will provide that any party that has not received a copy of the Sale Motion or this Order that wishes to obtain a copy of the Sale Motion or this Order, including all exhibits hereto, may view and download such document by visiting the Debtors’ bankruptcy website [www.bmcgroup.com/cep](http://www.bmcgroup.com/cep).

17. Within thirty (30) days of the filing of the Sale Motion, Debtors will also serve a proposed cure notice (the “**Cure Notice**”) in substantially the form of Exhibit B to the Sale Motion on all non-debtor counterparties (collectively, the “**Counterparties**” and each, a “**Counterparty**”) to executory contracts and unexpired leases which may be assumed by the

Debtors and assigned to a purchaser of a the Tuscaloosa Facility under the Proposed Purchase Agreement. The Cure Notice will state the amount of cure with respect to each Counterparty's contract or lease.

18. If a Counterparty disagrees with the cure amount stated on its respective Cure Notice or contests the assumption of its contract, it must file an objection (a "**Cure Objection**") with this Court within ten (10) days of service of the Cure Notice. Any objection to a Cure Amount must (i) describe in detail any default related to the executory contract or unexpired lease, and (ii) claim a specific monetary cure amount that differs from the amount (if any) specified by the Debtors in the Cure Notice.

19. Except with respect to the Counterpart to any non-residential real estate leases, if a Counterparty fails to timely object to the Cure Notice, such Counterparty will be deemed to have consented to (i) the Cure Amount and any adequate assurance of future performance proposed to be provided to the Counterparty, (ii) the assumption by the Debtors of its contract or unexpired lease, and (iii) the assignment by the Debtors of its contract or unexpired lease to the Successful Bidder, as applicable.

20. Cure Objections will be resolved by the Court at the Sale Hearing.

21. The assignee of any such contracts or unexpired leases will be relieved of any liability to the Counterparty to such contract or unexpired lease that accrued or arose before the closing date of the transaction and the Debtors will be relieved of all liability accruing or arising thereafter pursuant to 11 U.S.C. § 365(k).

22. The Successful Bidder will have until the earlier of (i) December 19, 2006 or the date of the closing on its Proposed Purchase Agreement to indicate those contracts (the “**Assumed Contracts**”) of which it will accept assignment. All contracts not so designated by the Successful Bidder(s) will not be deemed assumed by the Debtors.

### **Proceeds**

23. The proceeds of all sales of the Debtors’ assets pursuant to the Sale Motion shall be applied pursuant to the Financing Order, including any final order thereon.

### **Reservation**

24. Except with respect to a consented-to sale of the Tuscaloosa Assets free and clear of all deemed claims and encumbrances which shall attach to the proceeds of such sale under the terms of the Sale Order, nothing in this Order shall constitute, or be deemed to constitute, a release or waiver by Lender of any of its rights, liens or interests in or against Debtors or any of their assets, and all objections of Lender to the disposition of any of Debtors’ assets (under Code s 363(f) or otherwise) are expressly reserved.

IT IS SO ORDERED

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Respectfully submitted by:

/s/ Joseph F. Hutchinson, Jr.  
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**Consented to by:**

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