

**EXHIBIT A**

CARTER DECLARATION

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

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In re: :  
 : Case No. 06-\_\_\_\_\_  
CEP HOLDINGS, LLC, et al.,<sup>1</sup> : (Jointly Administered)  
 :  
Debtors. : Chapter 11  
 :  
 : Honorable Russ Kendig  
----- X

**DECLARATION OF JAMES W. CARTER IN  
SUPPORT OF APPLICATION OF DEBTORS AND  
DEBTORS IN POSSESSION FOR ORDER, PURSUANT  
TO SECTIONS 327(a) AND 328 OF THE BANKRUPTCY CODE  
AND BANKRUPTCY RULE 2014(a), AUTHORIZING DEBTORS TO  
EMPLOY GIULIANI CAPITAL ADVISORS LLC AS INVESTMENT BANKERS**

Pursuant to Rule 2014(a) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), James W. Carter being sworn, declares as follows:

1. I am a Managing Director of Giuliani Capital Advisors LLC (“**GCA**”). I provide this Declaration (the “**Declaration**”) of behalf of GCA in support of the Application of Debtors and Debtors in Possession for Order, Pursuant to Sections 327(a) and 328 of the Bankruptcy Code and Bankruptcy Rule 2014(a), authorizing Debtors to Employ Giuliani Capital Advisors as Investment Bankers LLC (the “**Application**”)<sup>2</sup> pursuant to the terms and conditions set forth in the Engagement Letter<sup>3</sup> between the Debtors and GCA.

2. GCA is a national investment bank and corporate finance advisory firm with offices located in Atlanta, Georgia; Chicago, Illinois; Los Angeles, California; New York, New

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

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings given to them in the Application.

<sup>3</sup> A copy of the Engagement Letter is attached to the Application as **Exhibit B**.

York; and Troy, Michigan. GCA acts as financial and restructuring advisors to, among others, debtors, creditors, and committees in cases pending throughout the United States as well as non-bankruptcy matters.

3. GCA is an affiliate of Giuliani Partners LLC (“GP”). GP is a privately owned advisory firm founded in 2002 by Rudolph Giuliani, the former mayor of New York City and is headquartered in New York City. GCA with its affiliates, provides a broad range of corporate advisory services to its clients including, without limitation, services pertaining to: (a) general strategic and financial advice; (b) corporate restructurings; and (b) investment banking services, including private capital raising, mergers, acquisitions, and divestitures and fairness opinions.

4. GCA and its senior professionals, including those who will have primary responsibility for this engagement, have extensive experience in the reorganization and restructuring of troubled companies, both out-of-court and in Chapter 11 proceedings. The employees of GCA have advised debtors, creditors, equity constituencies, and purchasers in many reorganizations, including Covanta Energy Corporation, Dade Berhring, Inc., Enron Corp., Hawaiian Airlines, Inc., McCook Metals LLC, Pillowtex Corporation, US Airways Group, Inc., Veltri Metal Products, Inc., and many others.

5. As set forth in further detail in the Engagement Letter, GCA has agreed to provide financial advisory services to the Debtors in connection with these Cases upon approval of the Court. The nature and extent of the services that GCA proposes to render, as may be requested by the Debtors and as may be agreed to by GCA, include, but are not limited to, the following:

- (a) Advise and assist the Debtors in a disposition of these assets (*i.e.*, facilities with ongoing customer relationships and books of business) that it determines, prior to the commencement of any sale process, are saleable as going concerns (the “**Designated Assets**”);

- (b) Advise in developing the Debtors' strategy in connection with the proposed sale to another party, whether effected in one transaction or a series of transactions, of substantially all of the assets and/or liabilities of the Debtors (the "**Transaction**");
- (c) Advise in developing the Debtors' strategy with regard to the Transaction;
- (d) Assist in analyzing the financial effects of the proposed Transaction;
- (e) Assist in preparing, if necessary, a descriptive memorandum regarding the Transaction;
- (f) Advise the Debtors in their negotiations regarding the Transaction, including, if necessary, negotiating (along with legal counsel) a definitive agreement; and
- (g) Coordinating with the Debtors' legal counsel regarding matters related to the closing of a Transaction.

#### **DISINTERESTEDNESS**

6. In connection with GCA's proposed retention by the Debtors, GCA has performed the following conflicts check procedures:

- (a) Based on the materials filed with the Court in connection with the filing of the Cases, the Debtors compiled a comprehensive list of the Debtors, their affiliates, subsidiaries, directors and officers, and the Debtors' significant creditors, employee-related parties, professionals, landlords, lessors, customers, vendors, equity security holders and other entities with significant relationships with the Debtors (the "**Retention Checklist**").
- (b) Using the Retention Checklist, a list of the names of entities who may be significant parties in interest to these Cases (the "**Potential Parties In Interest**") was assembled.
- (c) GCA compared each of the Potential Parties In Interest to the names that GCA has compiled into a master records database for its conflict clearance process, comprised of the names of clients of GCA since 2000 and GP since 2002 (collectively, the "**Records Database**"). The Records Database includes the name of each current or former client of GCA and GP for the time periods described above, the names of other relevant parties such as certain referring parties and vendors of GCA, and any lenders, landlords and insurers of GCA and GP. It is the policy of GCA that no new

matter may be accepted or opened without first completing and submitting to those charged with maintaining the conflict check system information necessary to check each such matter for conflicts, including the identity of the prospective client, the matter, and, where appropriate, other relevant parties. Furthermore, GP regularly provides GCA with a list of its newly engaged clients. Accordingly, the database is regularly updated for every new matter undertaken by GCA and GP.

- (d) Any matches between the Records Database and the list of Potential Parties In Interest are reviewed, and the respective GCA or GP personnel responsible for current or former matters (less than one year old) are contacted to ascertain whether there is a conflict between the engagement and the previous engagement.
- (e) To the extent that GCA's research of relationships with the Potential Parties In Interest indicated that either GCA, GP and/or their affiliates have provided in the last year or are currently providing services to any of these entities in matters unrelated to these Cases, GCA has so indicated in the attached *Exhibit 1* to this Declaration. It is GCA's policy and intent to update and expand its ongoing relationship search for additional parties in interest in an expedient manner. If any new relevant facts or relationships are discovered or arise, GCA will promptly file a supplemental declaration pursuant to Bankruptcy Rule 2014(a).

7. Except as set forth herein or on *Exhibit 1* attached hereto, to my knowledge based on reasonable inquiry, (a) GCA and its Managing Directors that are anticipated to provide the services for which GCA is to be retained in these Cases (the "**Engagement Managing Directors**") do not hold or represent any interest adverse to the Debtors and their estates and (b) GCA and the Engagement Managing Directors have no connection to the Debtors, the Debtors' significant creditors, other known significant parties-in-interest in these Cases, or to the attorneys of the Debtors except as described below or on *Exhibit 1* attached hereto. As such, I believe GCA is disinterested as such term is defined pursuant to section 101(14) of the Bankruptcy Code, as modified by section 1107(b) of the Bankruptcy Code, in that GCA:

- (a) is not a creditor, an equity security holder, or an insider;

- (b) is not and was not within two years before the date of the filing of the petition, a director, officer, or employee of the debtor; and
- (c) does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor, or for any other reason.

8. The facts set forth in my Declaration are based upon my personal knowledge, upon information and belief, and upon client matter records kept in the ordinary course of business that were reviewed by me or other employees of GCA under my supervision and direction. The results of that investigation are set forth at *Exhibit 1* appended hereto.

9. As part of their practices, GCA, GP and/or their affiliates appear in cases, proceedings and transactions involving many different attorneys, accountants and financial advisors, some of which may represent or be claimants and/or parties in interest in these Cases. To the best of my knowledge, neither GCA, GP and/or their affiliates has any relationship with such entity that would be materially adverse to the Debtors and their creditors.

10. GCA will review its conflicts database and determine whether it has any connection to the United States Trustee for this district or the Judge or Assistant United States Trustee assigned to these Cases. In the event that a supplemental filing to disclose any connection is required, GCA shall do so.

11. To the best of my knowledge, information and belief formed after reasonable inquiry, none of the services rendered by GCA, GP and/or their affiliates to the entities as set forth on *Exhibit 1* hereto, have been performed in connection with these Cases. GCA believes that its relationships will not impair GCA's ability to perform professional services objectively on behalf of the Debtors. GCA will not accept any engagement that would require GCA to represent an interest materially adverse to the Debtors or their estates.

12. GP holds a majority interest in GCA. Certain partners in GP are partners in the law firm of Bracewell & Giuliani (f/k/a Bracewell & Patterson). Bracewell & Giuliani is not an affiliate of GP (or GCA). Bracewell & Giuliani is neither retained in, nor a party-in-interest in, these proceedings. While clients of Bracewell & Giuliani could be creditors of the Debtors or otherwise parties-in-interest thereto, Bracewell & Giuliani does not currently represent such clients in these Cases.

13. GCA has not shared or agreed to share any of its compensation in connection with this matter with any other person. GP, as the majority shareholder of GCA, has a variety of contractual rights, including the right to receive distributions under agreed circumstances.

14. To the best of my knowledge, information and belief formed after reasonable inquiry, GCA does not hold nor represent any interest materially adverse to the Debtors or their estates and is “disinterested” within the meaning of section 101(14) of the Bankruptcy Code, as modified by section 1107(b) of the Bankruptcy Code. The proposed employment of GCA by the Debtors is not prohibited by or improper under Bankruptcy Rule 5002. Accordingly, I believe that GCA is eligible for retention by the Debtors under the Bankruptcy Code.

#### **TERMS OF RETENTION**

15. Subject to the Court’s approval and pursuant to the terms and conditions of the Engagement Letter, GCA intends to charge for the professional services rendered to the Debtors in these Cases as follows:

- (a) Upon execution of the Engagement Letter, and every thirty (30) calendar days thereafter until the termination of the Engagement Letter, the Debtors shall pay an advisory fee (the “**Monthly Advisory Fees**”) of \$25,000. Upon the termination of the Engagement Letter, a prorated portion of the Monthly Advisory Fee shall be returned by GCA to the Debtors, to adjust for any partial month period in the month of such termination;

- (b) For each Transaction consummated during the period that GCA is engaged by the Debtors, the Debtors shall pay a fee in cash at the closing of each Transaction or similar transaction (the “**Transaction Fee**”) equal to the greater of: (1) 3.0% of the Transaction Value (as such term is defined below) of the Designated Assets involved in each Transaction; or (2) one hundred and twenty five thousand (\$125,000) for each Designated Asset involved in the Transaction. For the avoidance of doubt, if one of the Debtors’ Designated Assets (*e.g.*, Tuscaloosa facility) is involved in a Transaction, the Transaction Fee would be the greater of 3.0% of Transaction Value or \$125,000. Similarly, if multiple Designated Assets are sold in a single Transaction, the Transaction Fee would be calculated based on the actual or a mutually agreed upon allocation of Transaction Value for each Designated Asset such that the greater of 3.0% of Transaction Value or \$125,000 per Designated Asset would apply to each Designated Asset. For purposes of this Letter Agreement, “**Transaction Value**” shall mean the total consideration paid or payable (*e.g.*, cash, property, stock, options, warrants, or other securities, consulting agreements, non-compete provisions, earnouts, excluded assets that are intended as purchase consideration, deferred or escrowed consideration and/or notes) to the Debtors and/or its creditors and its shareholders plus the total book value of indebtedness for money borrowed, directly or indirectly assumed, forgiven, repaid, refinanced, restructured, retired, extinguished or acquired as a result of or in connection with the Transaction. If any portion of the Transaction Value is not readily determinable as of the closing, then the Debtors and GCA will determine a dollar equivalent by agreement before the closing. Any amounts to be paid contingent upon future events shall be estimated in a manner mutually agreeable to the Debtors and GCA, except that amounts held in escrow shall be deemed paid at closing.
- (c) If the Debtors determine not to sell any of the Designated Assets and/or an alternative form of the Transaction is determined appropriate by the Debtors (by way of example only, a liquidation), GCA shall not be entitled to a Transaction Fee unless the Purchaser(s) (as such term is defined in the Engagement Letter) was a party (a) involved in the transaction process; or (b) identified or introduced to the Debtors by GCA, or interacted with GCA or the Debtors during the term of the engagement in connection with a potential Transaction; and
- (d) In addition to the fees that are or may be payable to GCA under the Engagement Letter, GCA’s reasonable out-of-pocket expenses incurred in connection with its activities under the Engagement

Letter will be payable by the Debtors on a monthly basis. Such expenses will include, but not be limited to, costs directly associated with the Engagement Letter, including reasonable attorneys' fees and expenses, travel, out-of-town accommodations and meals, overnight delivery, and database access charges, telephone, facsimile, postage, printing and duplication, document materials and similar items. Monthly expenses are payable by the Debtors upon receipt of an invoice for such expenses from GCA, subject to applicable bankruptcy procedures regarding professional compensation.

16. GCA is not owed any amounts with respect to its prepetition fees and expenses.

17. GCA intends to apply to this Court for allowances of compensation and reimbursement of expenses for financial advisory support services in accordance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, corresponding Local Rules, orders of this Court and guidelines established by the United States Trustee. In connective therewith, GCA will maintain detailed records of any actual and necessary out-of-pocket costs and expenses incurred in connection with the services provided to the Debtors. The Debtors will request that the Court allow GCA to submit time records in a streamlined or summary format which shall set forth a description of the services rendered by each professional and the aggregate amount of the time spent on each date by each such professional in rendering the services to or on behalf of the Debtors.

#### **DISPUTE RESOLUTION PROVISIONS**

18. The Debtors and GCA have agreed, subject to the Court's approval of the Application, that:

- (a) Any controversy or claim ("**Dispute**") shall be settled by arbitration. The arbitration shall be conducted in accordance with the procedures in the Engagement Letter and the Commercial Arbitration Rules of the American Arbitration Association then in effect (the "Rules"), or such other rules and procedures as the parties may designate by mutual agreement. In the event of a conflict, the provisions of the Engagement Letter shall control.

- (b) The arbitration shall be conducted before a panel of three arbitrators, selected in accordance with the Rules. The arbitration shall take place in the City of New York, or in such other location as may be expressly agreed by the parties. Any issue concerning the extent to which any Dispute is subject to arbitration, or concerning the applicability, interpretation, or enforceability of these procedures, including any contention that all or part of these procedures are invalid or unenforceable, shall be governed by the Federal Arbitration Act and be resolved by the arbitrators. No potential arbitrator shall be appointed unless he or she has agreed in writing to abide and be bound by these procedures.
- (c) The arbitrator panel shall have no power to award non-monetary or equitable relief of any sort. It shall also have no power to award (a) damages inconsistent with any applicable agreement between the parties or (b) consequential, incidental, indirect, punitive or special damages or any other damages not measured by the prevailing party's actual damages; and the parties expressly waive their right to obtain such damages in arbitration or in any other forum. In no event, even if any other portion of these provisions is held to be invalid or unenforceable, shall the arbitration panel have power to make an award or impose a remedy that could not be made or imposed by a court deciding the matter in the same jurisdiction.
- (d) Discovery shall be permitted in connection with the arbitration only to the extent, if any, expressly authorized by the arbitration panel upon a showing of substantial need by the party seeking discovery.
- (e) All aspects of the arbitration shall be treated as confidential. The parties and the arbitration panel may disclose the existence, content or results of the arbitration only as provided in the Rules. Before making any such disclosure, a party shall give written notice to all other parties and shall afford such parties a reasonable opportunity to protect their interests.

#### **INDEMNIFICATION PROVISIONS**

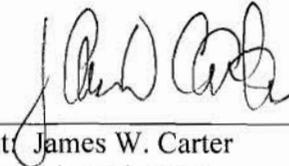
19. As set forth more fully in the Engagement Letter, the Debtors have further agreed to indemnify and hold harmless GCA and its affiliates, and their respective directors, officers, managers, members, partners, employees, agents and controlling persons (GCA and each such person being an “**Indemnified Party**”) from and against any losses, claims, damages or

liabilities (“**Claims**,” and each a “**Claim**”), joint or several, to which any Indemnified Party may become subject in connection with a Transaction, and transaction contemplated by the Engagement Letter or the engagement of GCA pursuant to, and the performance of GCA of the services contemplated by the Engagement Letter.

20. It is my understanding that the Debtors also will reimburse any Indemnified Party for all expenses (including fees and expenses of legal counsel) as such expenses are incurred in connection with investigating, preparing to defend, or defending such Claims, whether or not such Indemnified Party is a party and whether or not such Claim is initiated or brought by or on behalf of the Debtors. However, the Debtors will not be obligated under the indemnity if it is finally determined by a court or otherwise pursuant to the dispute resolution procedures contained in the Engagement Letter that such Claims arose out of the gross negligence or willful misconduct of GCA.

**[Intentionally Left Blank]**

21. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that this Declaration was executed on September 18, 2006, at Troy, MI.



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Declarant: James W. Carter  
Title: Managing Director

**Exhibit 1**

<b>Entity Name</b>	<b>Relationship with Debtor</b>	<b>Relationship with GCA</b>
Dow Corning	Other Parties in Interest of Debtor	Existing relationship with GCA on matters wholly unrelated to the Debtors.
Flex Technologies	Other Parties in Interest of Debtor	Prior relationship with GCA on matters wholly unrelated to the Debtors.
Chase Bank	Secured Creditor of Debtor	Existing relationship with GCA on matters wholly unrelated to the Debtors.
Wachovia Capital	Secured Creditor of Debtor	Prior relationship with GCA on matters wholly unrelated to the Debtors.
A.P. Plasman Inc.	Top 50 Unsecured Creditor of Debtor	Prior relationship with GCA on matters wholly unrelated to the Debtors.
Brown Corp. of Greenville	Top 50 Unsecured Creditor of Debtor	Prior relationship with GCA on matters wholly unrelated to the Debtors.
Dow-Corning STI	Top 50 Unsecured Creditor of Debtor	Prior relationship with GCA on matters wholly unrelated to the Debtors.
GE Polymerland	Top 50 Unsecured Creditor of Debtor	Existing relationship between parent company and GCA on matters wholly unrelated to the Debtors.
GE Polymerland Services	Top 50 Unsecured Creditor of Debtor	Existing relationship between parent company and GCA on matters wholly unrelated to the Debtors.
Sika Corporation	Top 50 Unsecured Creditor of Debtor	Prior relationship with GCA on matters wholly unrelated to the Debtors.
General Motors	Customer	Prior relationship with GCA on matters wholly unrelated to the Debtors