

Clerk's Stamp



COURT FILE NUMBER 2301 - 08305  
COURT COURT OF KING'S BENCH OF ALBERTA  
JUDICIAL CENTRE CALGARY

IN THE MATTER OF THE *COMPANIES'*  
*CREDITORS ARRANGEMENT ACT*, RSC  
1985, c C-36, as amended

AND IN THE MATTER OF THE COMPROMISE  
OR ARRANGEMENT OF WALLACE & CAREY  
INC., LOUDON BROS. LIMITED, and CAREY  
MANAGEMENT INC.

DOCUMENT **ORDER CONFIRMING SALE AND VESTING  
TITLE**

ADDRESS FOR SERVICE AND CONTACT  
INFORMATION OF PARTY FILING THIS  
DOCUMENT

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File No.: 0221652.0006

DATE ON WHICH ORDER WAS PRONOUNCED: November 3, 2023  
NAME OF JUSTICE WHO MADE THIS ORDER: The Honourable Justice D. Mah  
LOCATION OF HEARING: Edmonton, Alberta

**UPON** the application of Wallace & Carey Inc., ("**W&C**") Loudon Bros. Limited ("**Loudon Bros**"), and Carey Management Inc. ("**CMI**", collectively with W&C and Loudon Bros, the "**Applicants**") under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an order (this "**Order**"), *inter alia*, approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "**Sale Agreement**") between Loudon Bros and Karimi Holdings Ltd. (the "**Purchaser**") dated October 22, 2023, appended to the Fifth Report of KSV Restructuring Inc. in its capacity as Court-appointed monitor of the Applicants (the "**Monitor**") dated October 30, 2023 (the "**Fifth Report of the Monitor**"),

and which contemplates vesting in the Purchaser Loudon Bros' right, title and interest in and to the assets described in the Sale Agreement (the "**Purchased Assets**");

**AND UPON** having read the Application, Affidavit of Patrick Carey, sworn October 27, 2023 (the "**Carey Affidavit**"), the Confidential Exhibit "1" to the Carey Affidavit, the Fifth Report of the Monitor and the Affidavit of Service of Marica Ceko, sworn October 30, 2023; and

**AND UPON** hearing counsel for the Applicants, the Purchaser, the Monitor and such other parties present;

**IT IS HEREBY ORDERED AND DECLARED THAT:**

**DEFINITIONS**

1. All capitalized terms used in this Order but not otherwise defined shall have the same meaning as given to such terms in the Carey Affidavit or the Fifth Report of the Monitor, as applicable.

**SERVICE**

2. Service of notice of this application and supporting materials is hereby declared good and sufficient and time for service of this application is abridged to that actually given.

**APPROVAL OF TRANSACTION**

3. The Sale Agreement and Transaction are hereby approved and execution of the Sale Agreement by Loudon Bros is hereby authorized and approved, with such minor amendments as the Applicants and the Monitor may deem necessary. Loudon Bros and the Monitor are hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for completion of the Transaction and conveyance of the Purchased Assets to the Purchaser.

**VESTING OF PROPERTY**

4. Upon delivery of a Monitor's certificate to the Purchaser substantially in the form set out in **Schedule "A"** hereto (the "**Monitor's Closing Certificate**"), all of Loudon Bros' right, title and interest in and to the Purchased Assets listed in **Schedule "B"** hereto shall vest absolutely in the name of the Purchaser, free and clear of and from any and all caveats, security interests, hypothecs, pledges, mortgages, liens, trusts or deemed trusts,

reservations of ownership, royalties, options, rights of pre-emption, privileges, interests, assignments, actions, judgments, executions, levies, taxes, writs of enforcement, charges, or other claims, whether contractual, statutory, financial, monetary or otherwise, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively the, “**Claims**”) including, without limiting the generality of the foregoing:

- (a) any encumbrance or charges created by the Amended and Restated Initial Order dated June 30, 2023, or any other Order granted in these proceedings;
- (b) any charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system;
- (c) any liens or claims of lien under the *Construction Act* (Ontario); and
- (d) those Claims listed in **Schedule “C”** hereto (all of which are collectively referred to as the “**Encumbrances**”, which term shall not include the permitted encumbrances, caveats, interests, easements, and restrictive covenants listed in **Schedule “D”** (collectively the, “**Permitted Encumbrances**”)

and for greater certainty, this Court orders that all Claims including Encumbrances other than the Permitted Encumbrances, affecting or relating to the Purchased Assets are hereby expunged, discharged and terminated as against the Purchased Assets.

5. Upon the registration in the Land Titles Division of the Land Registry Office of Thunder Bay (No. 55) (the “**Land Registry Office**”) of one or more Transfer(s) in the form prescribed by the Land Titles Act (Ontario) (each, a “**Transfer**”) of all or any portion of the real property Purchased Assets identified in Schedule “**B**” hereto, duly executed by the Loudon Bros and the Monitor (or deemed to be executed through electronic signature), the Director of Titles (the “**Director**”) is hereby directed to enter the transferee named in any such Transfer in fee simple, and is hereby directed to delete and expunge from title to the real property set out in each such Transfer all of the Claims listed in Schedule “**C**” hereto, including such further Claims as may have arisen and/or been registered against title to the real property Purchased Assets.

6. Upon delivery of the Monitor's Closing Certificate, and upon filing of a certified copy of this Order, together with any applicable registration fees, all governmental authorities including those referred to above and below in this paragraph (collectively the, "**Governmental Authorities**") are hereby authorized, requested and directed to accept delivery of such Monitor's Closing Certificate and certified copy of this Order as though they were originals and to register such transfers, interest authorizations, discharges and discharge statements of conveyance as may be required to convey to the Purchaser clear title to the Purchased Assets subject only to Permitted Encumbrances. Without limiting the foregoing:
  - (a) the Registrar of the Ontario Personal Property Registry (the "**PPR Registrar**") shall and is hereby directed to forthwith cancel and discharge any registrations at the Ontario Personal Property Registry (whether made before or after the date of this Order) claiming security interests (other than Permitted Encumbrances) in the estate or interest of the Applicants in any of the Purchased Assets which are of a kind prescribed by applicable regulations as serial-number goods.
7. In order to effect the transfers and discharges described above, this Court directs each of the Governmental Authorities to take such steps as are necessary to give effect to the terms of this Order and the Sale Agreement. Presentment of this Order and the Monitor's Closing Certificate shall be the sole and sufficient authority for the Governmental Authorities to make and register transfers of title or interest and cancel and discharge registrations against any of the Purchased Assets of any Claims including Encumbrances but excluding Permitted Encumbrances.
8. No authorization, approval or other action by and no notice to or filing with any such Governmental Authorities or regulatory body exercising jurisdiction over the Purchased Assets is required for the due execution, delivery and performance by the Applicants of the Sale Agreement.
9. For the purposes of determining the nature and priority of Claims, net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets from and after delivery of the Monitor's Closing Certificate and all Claims including Encumbrances (but excluding Permitted Encumbrances) shall not attach to, encumber or otherwise form a charge, security interest, lien, or other Claim against the Purchased Assets and may be asserted against the net proceeds from the sale of the Purchased

Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

10. Except as expressly provided for in the Sale Agreement, the Purchaser shall not, by completion of the Transaction, have liability of any kind whatsoever in respect of any Claims against Loudon Bros.
11. Upon completion of the Transaction, Loudon Bros. and all persons who claim by, through or under Loudon Bros. in respect of the Purchased Assets, and all persons or entities having any Claims of any kind whatsoever in respect of the Purchased Assets, save and except for persons entitled to the benefit of the Permitted Encumbrances, shall stand absolutely and forever barred, estopped and foreclosed from and permanently enjoined from pursuing, asserting or claiming any and all right, title, estate, interest, royalty, rental, equity of redemption or other Claim whatsoever in respect of or to the Purchased Assets, and to the extent that any such persons or entities remain in the possession or control of any of the Purchased Assets, or any artifacts, certificates, instruments or other indicia of title representing or evidencing any right, title, estate, or interest in and to the Purchased Assets, they shall forthwith deliver possession thereof to the Purchaser.
12. The Purchaser shall be entitled to enter into and upon, hold and enjoy the Purchased Assets for its own use and benefit without any interference of or by Loudon Bros. or the Monitor, or any person claiming by, through or against Loudon Bros.
13. Immediately upon closing of the Transaction, holders of Permitted Encumbrances shall have no claim whatsoever against Loudon Bros.
14. The Monitor is directed to file with the Court a copy of the Monitor's Closing Certificate forthwith after delivery thereof to the Purchaser.
15. The Monitor may rely on written notice from the Loudon Bros. and the Purchaser or their respective counsel regarding the satisfaction of the Purchase Price and the fulfillment of the conditions to closing under the Agreement and shall incur no liability with respect to the delivery of the Monitor's Closing Certificate.

## THE MONITOR

16. Without in any way limiting the Monitor's powers set out in the Amended and Restated Initial Order, any other Order of this Court in these CCAA proceedings, or under the CCAA or applicable law, the Monitor is hereby authorized to undertake and perform such activities and obligations as are contemplated to be undertaken or performed by the Monitor pursuant to this Order and the Sale Agreement or any ancillary document related thereto, and shall incur no liability in connection therewith, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall affect, vary, derogate from, limit or otherwise amend any of the protections in favour of the Monitor at law or pursuant to the CCAA, the Amended and Restated Initial Order or any other Order granted in these CCAA proceedings.

## INTERIM DISTRIBUTION

17. The Monitor is hereby authorized and directed, at such time as it determines appropriate to make an interim distribution or interim distributions to the Canadian Imperial Bank of Commerce of the Net Sale Proceeds received from the Transaction.

## APPROVAL OF THE FIFTH REPORT OF THE MONITOR

18. The Fifth Report of the Monitor, as well as the actions, conduct and activities of the Monitor as set out therein, be and are hereby approved.

## SEALING ORDER

19. Part 6, Division 4 of the *Alberta Rules of Court* does not apply to this application and the Clerk of the Court is hereby directed to seal Confidential Exhibit "1" (the "**Confidential Exhibit**") to the Carey Affidavit until the earlier of:
  - (a) the Monitor files the certificate contained at Schedule "A" to this Order, evidencing that the Transaction has closed;
  - (b) an Order of this Court directs that the Confidential Exhibit be filed in this Action; or
  - (c) the Monitor files a certificate seeking its discharge as Monitor of the Applicants.
20. The Clerk of the Court is hereby directed to seal the Confidential Exhibit in an envelope setting out the style of cause in the within proceedings and labelled:

**THIS ENVELOPE CONTAINS A CONFIDENTIAL DOCUMENT. THE CONFIDENTIAL DOCUMENT IS SEALED ON COURT FILE 2301 – 08305 PURSUANT TO THE ORDER ISSUED BY JUSTICE D. MAH ON NOVEMBER 3, 2023. THIS CONFIDENTIAL DOCUMENT IS NOT TO BE ACCESSED BY ANY PERSON UNTIL THE EARLIER OF AN ORDER OF THE COURT DIRECTING THAT THE CONFIDENTIAL DOCUMENT BE FILED, AFTER THE FILING OF A MONITOR’S CLOSING CERTIFICATE FROM KSV RESTRUCTURING INC. IN ITS CAPACITY AS MONITOR OF THE APPLICANTS, CONFIRMING THAT THE CONFIDENTIAL DOCUMENT MAY BE FILED OR AFTER THE FILING OF A CERTIFICATE FROM KSV RESTRUCTURING INC. SEEKING A DISCHARGE AS MONITOR OF THE APPLICANTS.**

**MISCELLANEOUS MATTERS**

21. Notwithstanding:

- (a) the pendency of these proceedings and any declaration of insolvency made herein;
- (b) the pendency of any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, as amended (the “**BIA**”), in respect of the Applicants, and any bankruptcy order issued pursuant to any such applications;
- (c) any assignment in bankruptcy made in respect of the Applicants; and
- (d) the provisions of any federal or provincial statute:

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Applicants and shall not be void or voidable by creditors of the Applicants, nor shall it constitute nor be deemed to be a transfer at undervalue, settlement, fraudulent preference, assignment, fraudulent conveyance, or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

22. The Applicants, the Monitor, the Purchaser and any other interested party, shall be at liberty to apply for further advice, assistance and direction as may be necessary in order

to give full force and effect to the terms of this Order and to assist and aid the parties in closing the Transaction.

23. This Honourable Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any of its provinces or territories or in any foreign jurisdiction, to act in aid of and to be complimentary to this Court in carrying out the terms of this Order, to give effect to this Order and to assist the Applicants, the Monitor and their agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such order and to provide such assistance to the Monitor, as an officer of the Court, as may be necessary or desirable to give effect to this Order or to assist the Monitor and its agents in carrying out the terms of this Order.
24. Service of this Order shall be deemed good and sufficient by:
- (a) Serving the same on:
    - (i) the persons listed on the service list created in these proceedings;
    - (ii) any other person served with notice of the application for this Order;
    - (iii) any other parties attending or represented at the application for this Order;
    - (iv) the Purchaser or the Purchaser's solicitors; and
  - (b) Posting a copy of this Order on the Monitor's website at: <https://www.ksvadvisory.com/experience/case/wallace-and-carey>
- and service on any other person is hereby dispensed with.
25. Service of this Order may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following transmission or delivery of this Order.
26. This Order and all of its provisions are effective as of \_\_\_\_\_ a.m. Mountain Standard Time on the date of this Order.



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Justice of the Court of King's Bench of Alberta



**Schedule "A"**

**Form of Monitor's Certificate**

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COURT COURT OF KING'S BENCH OF ALBERTA  
JUDICIAL CENTRE CALGARY

IN THE MATTER OF THE *COMPANIES'*  
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AND IN THE MATTER OF THE COMPROMISE  
OR ARRANGEMENT OF WALLACE & CAREY  
INC., LOUDON BROS. LIMITED, and CAREY  
MANAGEMENT INC.

DOCUMENT **MONITOR'S CLOSING CERTIFICATE**

ADDRESS FOR SERVICE AND CONTACT  
INFORMATION OF PARTY FILING THIS  
DOCUMENT

MILLER THOMSON LLP  
3000, 700 - 9th Avenue S.W.  
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ptakhar@millerthomson.com

File No.: 0221652.0006

**RECITALS**

1. Pursuant to an Order of the Honourable Justice G.A. Campbell of the Court of King's Bench of Alberta, Judicial District of Calgary (the "**Court**") dated June 22, 2023, KSV Restructuring Inc. was appointed as the monitor (the "**Monitor**") of Wallace & Carey Inc. ("**W&C**"), Loudon Bros. Limited ("**Loudon**"), and Carey Management Inc. ("**CMI**", collectively with W&C and Loudon the "**Applicants**").
2. Pursuant to an Order of the Court dated November 3, 2023, the Court approved the agreement of purchase and sale made as of October 22, 2023 (the "**Sale Agreement**")

between Loudon and Karimi Holdings Ltd. (the "**Purchaser**"), which provided for the vesting in the Purchaser of the Loudon's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Monitor to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in section 2, Schedule A of the Sale Agreement have been satisfied or waived by the Monitor and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Monitor.

3. Unless otherwise indicated herein, capitalized terms have the meanings set out in the Sale Agreement and the Fifth Report of the Monitor, as applicable.

**THE MONITOR CERTIFIES** the following:

1. The Purchaser has paid and the Monitor has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in section 2, Schedule A of the Sale Agreement have been satisfied or waived by the Applicants and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Monitor.
4. This Certificate was delivered by the Monitor at **[Time]** on **[Date]**.

**KSV Restructuring Inc., in its capacity as Monitor of the Applicants and not in its personal capacity or corporate capacity.**

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

**Name:**

**Title:**

## **Schedule "B"**

### **Purchased Assets**

#### **Real Property**

##### **LEGAL DESCRIPTION:**

LT 13-19 BLK 20 PL W57 NEEBING ADDITIONAL; PT LT 1-12 BLK 20 PL W57 NEEBING ADDITIONAL; PT LT 18-19 BLK 13 PL W57 NEEBING ADDITIONAL; PT LANE BLK 20 PL W57 NEEBING ADDITIONAL ABUTTING LT 13 - 19, CLOSED BY OFW13445; PT ATHABASCA ST, ATLANTIC AV PL W57 NEEBING ADDITIONAL CLOSED BY OFW13445, AS IN TBR433257; S/T TBR388280; THUNDER BAY, being all of PIN 62063-0308 (LT)

#### **Personal Property**

All racking, shelves, wrapper and some power equipment, in its "as is, where is" condition located at the Real Property

**Schedule "C"**

**Encumbrances**

<b>Registration No.</b>	<b>Registration Date</b>	<b>Document Type</b>	<b>Party To</b>
TBR388676	1997/09/04	NOTICE OF LEASE	LOUDON BROS. LIMITED
TBR406284	1999/11/05	NOTICE OF SUBLEASE	SUPERIOR AIR COMPRESSORS INC.

**Schedule "D"**

**Permitted Encumbrances**

<b>Registration No.</b>	<b>Registration Date</b>	<b>Document Type</b>	<b>Party To</b>
OFW13445	1954/10/07	BY-LAW	
TBR388280	1997/08/19	TRANSFER	DELANO INVESTMENTS LIMITED
TBR433257	2003/06/11	EASEMENT	LOUDON BROS. LIMITED
TY124272	2011/08/02	LAND REGISTRAR'S ORDER	