

ENTERED

Clerk' 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

**APPLICATION**

\$50.00  
COM  
June 30, 2023  
Justice M.E. Burns

ADDRESS FOR SERVICE AND  
CONTACT INFORMATION OF  
PARTY FILING THIS DOCUMENT

MILLER THOMSON LLP  
Barristers and Solicitors  
3000, 700 – 9<sup>th</sup> Avenue SW  
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Attention: James W. Reid / Larry Ellis

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**NOTICE TO RESPONDENT(S):**

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the justice.

To do so, you must be in Court when the application is heard as shown below:

Date	<u>June 30, 2023</u>
Time	<u>2:00 p.m.</u>
Where	<u>Edmonton Law Courts (in person and via WebEx)</u>
Before Whom	<u>The Honourable Justice M.E. Burns</u>

Go to the end of this document to see what else you can do and when you must do it.

**Remedy claimed or sought:**

1. The Applicants, Wallace & Carey Inc., (“**Wallace & Carey**”), Loudon Bros Limited (“**Loudon Bros**”), and Carey Management Inc. (“**CMI**”, and together with Wallace & Carey and Loudon Bros, the “**Companies**” or the “**Applicants**”), seek an Amended and Restated Initial Order (the “**ARIO**”), under the *Companies’ Creditors Arrangement Act*, RSC 1985, c. C-36 (the “**CCAA**”) substantially in the form attached hereto as Schedule “**A**”, amending and restating the Initial Order granted by the Honourable Justice G.A. Campbell in the within proceeding on June 22, 2023 (the “**Initial Order**”) including, without limitation:
  - (a) extending the Stay Period up to and including September 20, 2023, or such other date as this Court may consider appropriate;
  - (b) declaring that the Applicants may file a plan of compromise or arrangement;
  - (c) declaring that the Applicants may pursue an orderly restructuring of the Business and the Property;
  - (d) increasing the Administration Charge to the aggregate amount of \$750,000;
  - (e) increasing the D&O Charge to the aggregate amount of \$4,000,000;
  - (f) increasing the Tobacco Tax Charge to the aggregate amount of \$26,000,000; and
  - (g) such further and other relief as the Applicants may request and this Honourable Court may grant.
2. Capitalized terms used and not otherwise defined herein have the meanings prescribed to them in the ARIO.

**Grounds for making this application:**

*Background*

3. On June 22, 2023, this Court granted the Initial Order, among other things, declaring that the Applicants were companies to which the CCAA applies, granting a stay of proceedings up to and including July 1, 2023, and appointing KSV Restructuring Inc. as Monitor.

4. The Applicants have been acting diligently and in good faith in these CCAA proceedings since the Initial Order was granted including, in consultation with the Monitor:
  - (a) engaging with its suppliers, customers, employees, contractual counterparties, provincial and territorial tobacco tax authorities, and other stakeholders regarding these CCAA proceedings, the Applicants' business during these CCAA proceedings, and various other issues; and
  - (b) reviewing the Applicants' forecasted operating costs in order to conserve capital.

*The Extension of the Stay Period*

5. The purpose of these CCAA proceedings is to: (a) stabilize the Business; (b) reduce costs and manage liquidity; and (c) provide the Applicants with the time and breathing room to put forward a plan of compromise and arrangement for consideration by affected creditors.
6. The Applicants require an extension of the Stay Period up to and including September 20, 2023, in order to continue advancing the foregoing purposes and to meet the milestones provided for in the CIBC Forbearance Agreement.
7. It is just, convenient, necessary, and in the best interest of the Companies and their stakeholders that the Applicants be afforded the protection provided by the CCAA and an extension of the Stay Period as they continue to advance their restructuring efforts.
8. With the continued use of the Cash Management System, the Applicants have enough liquidity to fund their obligations and the costs of these CCAA proceedings through the end of the extended Stay Period.
9. The Monitor supports the extension of the Stay Period as sought by the Applicants.

*Increase of the Administration Charge*

10. The Monitor, counsel to the Monitor, and counsel to the Applicants will be essential to the Companies' restructuring efforts.
11. The Applicants are seeking an increase to the Administration Charge to the aggregate amount of \$750,000 for the extended Stay Period.

12. The Applicants believe the increase to the Administration Charge is fair and reasonable given the size and complexity of the Business.
13. The Monitor is of the view that the quantum of the proposed increase to the Administration Charge is reasonable.

D&O Charge

14. The Applicants are seeking an increase in the D&O Charge to an aggregate amount not to exceed \$4,000,000.
15. The Applicants have worked with the Monitor to determine the appropriate amount of D&O Charge based on the potential exposure of the directors and officers for GST/PST/HST, employee wages, and source deductions over the proposed extended Stay Period.
16. The D&O Charge is required to ensure that the directors and officers of the Companies will continue to serve in such capacity and have assurance that they are appropriately indemnified for liabilities which may be incurred by the Companies during these proceedings and for which they may be personally liable.
17. The continued involvement of the directors and officers is integral to minimize disruption to the Business during these proceedings.
18. The directors and officers do not have the benefit of any insurance policies in respect of their potential liability. The directors and officers have expressed their need for certainty with respect to potential liability if they continue in their current capacities in the context of these CCAA proceedings.
19. The Monitor supports the increase of the D&O Charge as sought by the Applicants.

Tobacco Tax Charge

20. Wallace & Carey and Loudon Bros are required to collect, hold, and remit provincial and territorial tobacco taxes on all tobacco products sold. These Applicants currently hold the tobacco taxes collected, which are remitted in arrears, with remittance dates that vary by jurisdiction.
21. The Applicants are seeking an increase in the Tobacco Tax Charge in favour of the provincial and territorial authorities that are entitled to receive payments or collect

monies from Wallace & Carey and Loudon Bros in respect of the tobacco taxes to \$26 million to secure the collected but unremitted tobacco taxes.

22. The Monitor supports the increase of the Tobacco Tax Charge as sought by the Applicants.

**Material or evidence to be relied on:**

23. Affidavit No. 1 of Brian M. Birnie sworn June 21, 2023, filed.
24. Affidavit No. 2 of Brian M. Birnie sworn June 27, 2023, to be filed.
25. Pre-filing Report of KSV Restructuring Inc. as Monitor dated June 22, 2023, filed.
26. First Report of the Monitor, to be filed.
27. Bench Brief of the Applicants dated June 21, 2023, filed.
28. Bench Brief of the Applicants dated June 27, 2023, to be filed.
29. Such further and other materials as counsel may advise and this Honourable court may permit.

**Applicable Acts and regulations:**

30. *Companies' Creditor Arrangement Act*, RSC 1985, c. C-36.
31. *Alberta Rules of Court*, Alta Reg 124/2010.

**Any irregularity complained of or objection relied on:**

32. None.

**How the application is proposed to be heard or considered:**

33. On the Commercial List, in person and via WebEx before the Honourable Justice M.E. Burns.

**WARNING**

You are named as a respondent because you have made or are expected to make an adverse claim in respect of this originating application. If you do not come to Court either in person or by your lawyer, the Court may make an order declaring you and all persons claiming under you to be barred from taking any further proceedings against the applicant(s) and against all persons claiming under the applicant(s). You will be bound by any order the Court makes, or another order might be given or other proceedings taken which the applicant(s) is/are entitled to make without any further notice to you. If you want to take part in the application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of this form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered.

**SCHEDULE "A"**

**Proposed form of Amended and Restated Initial Order**

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 **AMENDED AND RESTATED INITIAL ORDER**

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: June 30, 2023

NAME OF JUSTICE WHO MADE THIS ORDER: The Honourable Justice M.E. Burns

LOCATION OF HEARING: Edmonton Law Courts

**UPON** the application of Wallace & Carey Inc., Loudon Bros Limited, and Carey Management Inc. (collectively, the "**Applicants**"),

**AND UPON** having read the Application, Affidavit No. 1 of Brian M. Birnie sworn June 21, 2023 ("**Birnie Affidavit No. 1**"), Affidavit No. 2 of Brian M. Birnie sworn June 27, 2023, the Pre-Filing Report of KSV Restructuring Inc. in its capacity as Proposed Monitor dated June 22, 2023, and the First Report of KSV Restructuring Inc. in its capacity as Monitor dated June 27, 2023;



**AND UPON** reading the consent of KSV Restructuring Inc. to act as Monitor (the “**Monitor**”);

**AND UPON** being advised that the secured creditors who are likely to be affected by the charges created herein have been provided notice of this application and either do not oppose or alternatively consent to the within Order;

**AND UPON** hearing counsel for the Applicants, counsel for the Monitor, counsel for Canadian Imperial Bank of Commerce, counsel for Canadian Western Bank;

**AND UPON** reviewing the Affidavit of Service of Marica Ceko worn June [●], 2023;

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

#### **SERVICE**

1. The time for service of the notice of application for this order (the “**Order**”) is hereby abridged and this application is properly returnable today.

#### **APPLICATION**

2. The Applicants are companies to which the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36 (“**CCAA**”) applies.

#### **PLAN OF ARRANGEMENT**

3. The Applicants shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the “**Plan**”) between, among others, the Applicants and one or more classes of their secured and/or unsecured creditors as they deem appropriate.

#### **POSSESSION OF PROPERTY AND OPERATIONS**

4. The Applicants shall:
  - (a) remain in possession and control of their current and future assets, undertakings, and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”);

- (b) subject to further order of this Court, continue to carry on business in a manner consistent with the preservation of their business (the “**Business**”) and Property;
  - (c) be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel, and such other persons (collectively, the “**Assistants**”) currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order; and
  - (d) be entitled to continue to utilize the Cash Management System (as hereinafter defined) in accordance with the Forbearance Agreement (as hereinafter defined) and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicants of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicants, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in their capacity as provider of the Cash Management System, unaffected creditors under any Plan with regard to any claims or expenses they may suffer or incur in connection with the provision of the Cash Management System.
5. To the extent permitted by law and subject to the terms of the Forbearance Agreement, the Applicants shall be entitled but not required to make the following advances or payments of the following expenses, incurred prior to or after this Order:
- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay, employee incentive plan payments, and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and

- (b) the reasonable fees and disbursements of any Assistants retained or employed by the Applicants in respect of these proceedings, at their standard rates and charges, including for periods prior to the date of this Order.
  
- 6. Except as otherwise provided to the contrary herein and subject to the terms of the Forbearance Agreement, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:
  - (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance, maintenance, and security services; and
  - (b) payment for goods or services actually supplied to the Applicants following the date of this Order.
  
- 7. The Applicants shall remit, in accordance with legal requirements, or pay:
  - (a) 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, and
    - (iii) income taxes,but only where such statutory deemed trust amounts arise after the date of this Order, or are not required to be remitted until after the date of this Order, unless otherwise ordered by the Court;
  - (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were

accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order; and

- (c) 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 Applicants.
8. Subject to paragraph 8, and the Forbearance Agreement, the Applicants shall be entitled to remit or pay, in accordance with legal requirements, any provincial and territorial tobacco tax obligations under the *Tobacco Tax Act*, RSA 2000, c T-4 or under any other applicable provincial legislation or laws (the "**Tobacco Taxes**") in the normal course, whether such Tobacco Taxes arose or were required to be remitted before or after the date of this Order. Without limiting the foregoing, and subject to the consent of the Monitor, the Applicants shall be authorized to pay, any amounts owing by the Applicants under the Tobacco Tax Payment Plans (as described and defined in Bernie Affidavit No. 1) to pay down any arrears outstanding for unremitted Tobacco Taxes.
  9. Any provincial or territorial authorities entitled to receive payments or collect monies from the Applicants in respect of Tobacco Taxes or Tobacco Tax Payment Plans are hereby stayed during the Stay Period from requiring that any amounts be paid or any security be posted by or on behalf of the Applicants (including from the Applicants' directors and officers) in connection with the Tobacco Taxes or from exercising any remedies, including license or permit suspensions, as a result of any non-payment of obligations outstanding as of the date of this Order.
  10. Until such time as a real property lease is disclaimed or resiliated in accordance with the CCAA, the Applicants may pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable as rent to the landlord under the lease) based on the terms of existing lease arrangements or as otherwise may be negotiated by the Applicants from time to time for the period commencing from and including the date of this Order ("**Rent**"), but shall not pay any rent in arrears.

11. Except as specifically permitted in this Order, the Applicants are hereby directed, until further order of this Court:
  - (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants to any of its creditors (including pursuant to guarantee or other contingent arrangements) as of the date of this Order, other than payments of principal, interest or amounts otherwise owing by the Applicants pursuant to the CIBC Credit Agreement, the Forbearance Agreement or the other Loan Documents (as defined in the CIBC Credit Agreement) (including, for greater certainty, payments of amounts owing in connection with the BCAP Loan, as defined in the CIBC Credit Agreement);
  - (b) to grant no security interests, trust, liens, charges, or encumbrances upon or in respect of any of their Property; and
  - (c) not to grant credit or incur liabilities except in the ordinary course of the Business.

## **RESTRUCTURING**

12. The Applicants shall, subject to such requirements as are imposed by the CCAA, and subject to the terms of the Forbearance Agreement, have the right to:
  - (a) permanently or temporarily cease, downsize or shut down any portion of their business or operations and to dispose of redundant or non-material assets not exceeding \$500,000 in any one transaction or \$2,000,000 in the aggregate, provided that any sale that is either (i) in excess of the above thresholds, or (ii) in favour of a person related to the Applicants (within the meaning of section 36(5) of the CCAA), shall require authorization by this Court in accordance with section 36 of the CCAA;
  - (b) terminate the employment of such of their employees or temporarily lay off such of their employees as they deem appropriate on such terms as may be agreed upon between the Applicants and such employee, or failing such agreement, to deal with the consequences thereof in the Plan;
  - (c) disclaim or resiliate, in whole or in part, with the prior consent of the Monitor or further Order of the Court, their arrangements or agreements of any nature

whatsoever with whomsoever, whether oral or written, as the Applicants deem appropriate, in accordance with section 32 of the CCAA; and

- (d) pursue all avenues of refinancing of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

all of the foregoing to permit the Applicants to proceed with an orderly restructuring of the Business (the “**Restructuring**”).

- 13. The Applicants shall provide each of the relevant landlords with notice of the Applicants’ intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal. If the landlord disputes the Applicants’ entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicants, or by further order of this Court upon application by the Applicants on at least two (2) days’ notice to such landlord and any such secured creditors. If the Applicants disclaim or resiliate the lease governing such leased premises in accordance with section 32 of the CCAA, they shall not be required to pay Rent under such lease pending resolution of any such dispute other than Rent payable for the notice period provided for in section 32(5) of the CCAA, and the disclaimer or resiliation of the lease shall be without prejudice to the Applicants’ claim to the fixtures in dispute.
- 14. If a notice of disclaimer or resiliation is delivered pursuant to section 32 of the CCAA, then:
  - (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicants and the Monitor 24 hours’ prior written notice; and
  - (b) at the effective time of the disclaimer or resiliation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicants

in respect of such lease or leased premises and such landlord shall be entitled to notify the Applicants of the basis on which it is taking possession and to gain possession of and re-lease such leased premises to any third party or parties on such terms as such landlord considers advisable, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

#### **NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY**

15. Until and including September 20, 2023, or such later date as this Court may order (the “**Stay Period**”), no proceeding or enforcement process in any court (each, a “**Proceeding**”) shall be commenced or continued against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, except with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants or affecting the Business or the Property are hereby stayed and suspended pending further order of this Court.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

16. During the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”), whether judicial or extra-judicial, statutory or non-statutory against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended and shall not be commenced, proceeded with or continued except with leave of this Court, provided that nothing in this Order shall:
  - (a) empower the Applicants to carry on any business which the Applicants are not lawfully entitled to carry on;
  - (b) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by section 11.1 of the CCAA;
  - (c) prevent the filing of any registration to preserve or perfect a security interest;
  - (d) prevent the registration of a claim for lien; or

(e) exempt the Applicants from compliance with statutory or regulatory provisions relating to health, safety, or the environment.

17. Nothing in this Order shall prevent any party from taking an action against the Applicants where such an action must be taken in order to comply with statutory time limitations in order to preserve their rights at law, provided that no further steps shall be taken by such party except in accordance with the other provisions of this Order, and notice in writing of such action be given to the Monitor at the first available opportunity.

#### **NO INTERFERENCE WITH RIGHTS**

18. During the Stay Period, no person shall accelerate, suspend, discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicants, except with the written consent of the Applicants and the Monitor, or leave of this Court.

#### **CONTINUATION OF SERVICES**

19. During the Stay Period, all persons having:

- (a) statutory or regulatory mandates for the supply of goods and/or services; or
- (b) oral or written agreements or arrangements with the Applicants, including without limitation all supply arrangements pursuant to purchase orders and historical supply practices, computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, services, utility or other services to the Business or the Applicants,

are hereby restrained until further Order of this Court from discontinuing, altering, interfering with, suspending or terminating the supply of such goods or services as may be required by the Applicants or exercising any other remedy provided under such agreements or arrangements. The Applicants shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the usual prices or charges for all such goods or services received after the date of this Order are paid by the Applicants in accordance with the payment practices of the Applicants, or such other practices as may be agreed upon by the supplier or service provider and each of the Applicants and the Monitor, or as may be ordered by this Court.



## **NON-DEROGATION OF RIGHTS**

20. Nothing in this Order has the effect of prohibiting a person from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicants.

## **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

21. During the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA and paragraph 17 of this Order, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicants with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

## **DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE**

22. The Applicants shall indemnify their directors and officers against obligations and liabilities that they may incur as directors and or officers of the Applicants after the commencement of the within proceedings except to the extent that, with respect to any officer or director, the obligation was incurred as a result of the director's or officer's gross negligence or wilful misconduct.
23. The directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "**D&O Charge**") on the Property, which charge shall not exceed an aggregate amount of \$4,000,000, as security for the indemnity provided in paragraph 22 of this Order. The D&O Charge shall have the priority set out in paragraphs 43 and 45 herein.
24. Notwithstanding any language in any applicable insurance policy to the contrary:
  - (a) no insurer shall be entitled to be subrogated to or claim the benefit of the D&O Charge; and

- (b) the Applicants' directors and officers shall only be entitled to the benefit of the D&O Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 22 of this Order.

#### **APPOINTMENT OF MONITOR**

- 25. KSV Restructuring Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the Property, Business, and financial affairs of the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.
- 26. The Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:
  - (a) monitor the Applicants' receipts and disbursements, Business and dealings with the Property;
  - (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein and immediately report to the Court if in the opinion of the Monitor there is a material adverse change in the financial circumstances of the Applicants or any of them;
  - (c) assist the Applicants, to the extent required by the Applicants, in its dissemination to the Lender and its counsel in accordance with the Forbearance Agreement (as defined below) of financial and other information as agreed to between the Applicants and the Lender which may be used in these proceedings, including reporting on a basis as reasonably required by the Lender;
  - (d) advise the Applicants in their preparation of the Applicants' cash flow statements and reporting required by the Lender, which information shall be reviewed with

the Monitor and delivered to the Lender and its counsel in accordance with the Forbearance Agreement, or as otherwise agreed to by the Lender;

- (e) advise the Applicants in its development of the Plan and any amendments to the Plan;
  - (f) assist the Applicants, to the extent required by the Applicants, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
  - (g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form and other financial documents and management, employees and advisors of the Applicants and to the extent that it is necessary to adequately assess the Property, Business and financial affairs of the Applicants or to perform its duties arising under this Order;
  - (h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;
  - (i) hold funds in trust or in escrow, to the extent required, to facilitate settlements between the Applicants and any other Person; and
  - (j) perform such other duties as are required by this Order or by this Court from time to time.
27. The Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, or by inadvertence in relation to the due exercise of powers or performance of duties under this Order, be deemed to have taken or maintain possession or control of the Business or Property, or any part thereof.
28. Nothing in this Order shall require the Monitor to occupy or to take control, care, charge, possession or management of any of the Property that might be environmentally contaminated, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal or waste or other contamination, provided however that this Order does

not exempt the Monitor from any duty to report or make disclosure imposed by applicable environmental legislation or regulation. The Monitor shall not, as a result of this Order or anything done in the pursuance of the Monitor's duties and powers under this Order be deemed to be in possession of any of the Property within the meaning of any federal or provincial environmental legislation.

29. The Monitor shall provide any creditor of the Applicants and Lender with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.
30. In addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.
31. The Monitor, counsel to the Monitor, and counsel to the Applicants shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, whether incurred prior to, on, or subsequent to, the date of this Order by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor, and counsel for the Applicants on a monthly basis.
32. The Monitor and its legal counsel shall pass their accounts from time to time.

#### **ADMINISTRATION CHARGE**

33. The Monitor, counsel to the Monitor, and counsel to the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$750,000, as security for their professional fees and disbursements incurred at their standard rates and

charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings.

34. The Administration Charge shall have the priority set out in paragraphs 43 and 45 hereof.

#### **CASH MANAGEMENT SYSTEM AND LENDER PRIORITY CHARGE**

35. The Applicants' execution and performance under the forbearance agreement dated as of June 22, 2023 between the Applicants and Canadian Imperial Bank of Commerce ("**CIBC**" or the "**Lender**") (among others), as may be amended from time to time (the "**Forbearance Agreement**") is hereby approved.
36. The Applicants shall be entitled to continue to utilize the credit facilities (the "**Cash Management System**") granted by CIBC under the CIBC Credit Agreement, as defined and described in Birnie Affidavit No. 1 (the "**CIBC Credit Agreement**"). For greater certainty, (i) the Applicants are authorized to borrow, repay and re-borrow such amounts from time to time as the Applicants may consider necessary or desirable under the CIBC Credit Agreement, subject to the terms and conditions of the Forbearance Agreement and the CIBC Credit Agreement; and (ii) the Lender is authorized to apply receipts and deposits made to the Applicants' bank accounts, whether directly or through blocked accounts, against the indebtedness owing to CIBC in accordance with the Forbearance Agreement, whether such indebtedness arose before or after the date of this Order.
37. The Cash Management System will be governed by the terms of the CIBC Credit Agreement and the Forbearance Agreement and such other documentation applicable to the Cash Management System, including any blocked account agreements. The Lender shall be an unaffected creditor in these proceedings and unaffected by any Plan filed by any of the Applicants or any proposal filed by any of the Applicants under the *Bankruptcy and Insolvency Act* (Canada) with respect to any obligations outstanding as of the date hereof or arising hereafter (including in connection with the BCAP Loan, as defined in the CIBC Credit Agreement), and the rights and remedies of the Lender shall be unaffected by paragraphs 15, 16, 18 and 19 of this Order or any other stay of proceedings that may be granted in these proceedings.
38. The Lender shall be entitled to the benefit of and is hereby granted a charge (the "**Lender Priority Charge**") on the Property, which charge shall not exceed an

aggregate principal amount of \$55,000,000 plus interest, fees and expenses, as security for any advances made under the CIBC Credit Agreement from and after the commencement of these CCAA proceedings.

39. The Lender Priority Charge shall have the priority set out in paragraphs 43 and 45 hereof.
40. The payments made by the Applicants pursuant to this Order, the CIBC Credit Agreement and the Forbearance Agreement, and the granting of the Lender Priority Charge shall not constitute or be deemed to be a preference, fraudulent conveyance or transfer at undervalue or other challengeable or reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”) or any applicable law, nor shall they constitute oppressive or unfairly prejudicial conduct under any applicable law. The rights of the Lender under this Order, including without limitation the Lender Priority Charge, shall be enforceable in any bankruptcy, interim receivership, or receivership or in any proceedings under the CCAA of the Applicants or Property.
41. Upon the Termination Date (as defined in the Forbearance Agreement) the Lender may:
  - (a) immediately cease making advances to the Applicants;
  - (b) set off and/or consolidate any amounts owing by the Lender to the Applicants against any obligations of the Applicants to the Lender under the CIBC Credit Agreement or the Forbearance Agreement or any other Loan Documents (as defined in the CIBC Credit Agreement) and make demand, accelerate payment or give other notices; and
  - (c) exercise any and all of its rights and remedies against the Applicants or the Property under or pursuant to the CIBC Credit Agreement, the Forbearance Agreement or the other Loan Documents.

#### **TOBACCO TAX CHARGE**

42. The provincial and territorial authorities that are entitled to receive payments or collect monies from the Applicants in respect of the Tobacco Taxes shall be entitled to the benefit of and are hereby granted a charge (the “**Tobacco Tax Charge**”) on the Property, which charge shall not exceed an aggregate amount of \$26,000,000, as

security for all amounts owing by the Applicants in respect of the Tobacco Taxes. The Tobacco Tax Charge shall have the priority set out in paragraphs 43 and 45.

#### **VALIDITY AND PRIORITY OF CHARGES**

43. The priorities of the Administration Charge, Lender Priority Charge, and the D&O Charge, as among them, shall be as follows:
  - (a) First – Administration Charge (to the maximum amount of \$750,000);
  - (b) Second – Lender Priority Charge (to the maximum amount of 55,000,000 plus interest, fees, and expenses);
  - (c) Third – D&O Charge (to the maximum amount of \$4,000,000);
  - (d) Fourth – the Encumbrances existing as of the date hereof in favour of the Lender securing the pre-filing obligations owing under the CIBC Credit Agreement including, for greater certainty, obligations in connection with the BCAP Loan; and
  - (e) Tobacco Tax Charge (to the maximum amount of \$26,000,000).
44. The filing, registration or perfection of the Administration Charge, the Lender Priority Charge, and the D&O Charge (collectively, the “**Charges**”) shall not be required, and the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.
45. Each of the Charges shall constitute a charge on the Property and subject always to section 34(11) of the CCAA, the Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, and claims of secured creditors, statutory or otherwise (collectively, “**Encumbrances**”) in favour of any Person, provided the Tobacco Tax Charge shall rank behind the Encumbrances securing the pre-filing obligations owing under the CIBC Credit Agreement.
46. Except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicants also obtain the prior

written consent of the Monitor, CIBC, and the beneficiaries of the Charges, or further order of this Court.

47. The Charges shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") and/or the Lender thereunder shall not otherwise be limited or impaired in any way by:
- (a) the pendency of these proceedings and the declarations of insolvency made in this Order;
  - (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications;
  - (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA;
  - (d) the provisions of any federal or provincial statutes; or
  - (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") that binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:
    - (i) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of any documents in respect thereof shall create or be deemed to constitute a new breach by the Applicants of any Agreement to which it is a party;
    - (ii) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges, or the execution, delivery or performance of the definitive documents associated with the Agreements; and
    - (iii) the payments made by the Applicants pursuant to this Order, and the granting of the Charges, do not and will not constitute preferences,



fraudulent conveyances, transfers at undervalue, oppressive conduct or other challengeable or voidable transactions under any applicable law.

### **ALLOCATION**

48. Any interested Person may apply to this Court on notice to any other party likely to be affected for an order to allocate the Administration Charge, the Lender's Priority Charge, the D&O Charge, and the Tobacco Tax Charge amongst the various assets comprising the Property.

### **SERVICE AND NOTICE**

49. The Monitor shall (i) without delay, publish in the Calgary Herald and the Globe and Mail a notice containing the information prescribed under the CCAA; (ii) within five (5) days after the date of this Order (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against either of the Applicants of more than \$1,000 and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with section 23(1)(a) of the CCAA and the regulations made thereunder.
50. The Monitor shall establish a case website in respect of the within proceedings at <https://www.ksvadvisory.com/experience/case/wallace-and-carey>.

### **GENERAL**

51. The Applicants or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
52. Notwithstanding Rule 6.11 of the Alberta Rules of Court, unless otherwise ordered by this Court, the Monitor will report to the Court from time to time, which reporting is not required to be in affidavit form and shall be considered by this Court as evidence. The Monitor's reports shall be filed by the Court Clerk notwithstanding that they do not include an original signature.
53. Nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicants, the Business, or the Property.

54. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.
55. The Applicants and the Monitor are at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order and that the Monitor is authorized and empowered to act as a representative in respect of the within proceeding for the purpose of having these proceedings recognized in a jurisdiction outside Canada.
56. Any interested party (including the Applicants and the Monitor) may apply to this Court to vary or amend this Order at the Comeback Hearing on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.
57. This Order and all of its provisions are effective as of 12:01 a.m. Mountain Standard Time on the date of this Order.