

COURT FILE NUMBER

2301 – 08305

COURT

COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE

CALGARY

APPLICANTS

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

COM

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

DOCUMENT

SECOND REPORT OF THE MONITOR
AUGUST 9, 2023

ADDRESS FOR
SERVICE AND
CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT

MONITOR

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1.0 Introduction

1. Pursuant to an order (the “**Initial Order**”) issued by the Court of King’s Bench of Alberta (the “**Court**”) on June 22, 2023 (the “**Filing Date**”), Wallace & Carey Inc. (“**Wallace & Carey**”), Loudon Bros Limited (“**Loudon Bros**”, and together with Wallace & Carey, the “**Logistics Companies**”) and Carey Management Inc. (“**CMI**”, and together with the Logistics Companies, the “**Applicants**”) were granted protection under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), and KSV Restructuring Inc. (“**KSV**”) was appointed monitor of the Applicants (in such capacity, the “**Monitor**”).
2. KSV is filing this second report (the “**Second Report**”) as the Monitor. The purpose of this Second Report is to provide the Court and the Applicants’ stakeholders with an update on the Applicants’ and the Monitor’s activities since the Monitor’s First Report to Court dated June 28, 2023 (the “**First Report**”), including an update on the Cash Flow Forecast (the “**Initial Cash Flow Forecast**”) for the period June 18 to September 30, 2023 (the “**Initial Forecast Period**”), which was filed as an appendix to KSV’s pre-filing report dated June 22, 2023 (the “**Pre-Filing Report**”).
3. Pursuant to paragraph 23(1)(d)(i) of the CCAA, the Monitor is required to file a report with the Court advising on the state of the company’s business and financial affairs after ascertaining a material adverse change in the company’s projected cash flow or financial circumstances. This Second Report is to advise of such circumstances; however, the Applicants are working with their principal secured lender, Canadian Imperial Bank of Commerce (“**CIBC**”) and other stakeholders to provide additional liquidity to Applicants to improve their operations during these proceedings. As of the date of this Second Report, CIBC is continuing to fund the Applicants in accordance with Forbearance Agreement dated June 22, 2023 between the Applicants and CIBC, as such agreement has been amended in these proceedings.

1.1 CCAA Proceedings

1. Pursuant to the terms of the Initial Order, *inter alia*, the Court:
 - a) granted a stay of proceedings in favour of the Applicants and their directors and officers (the “**Stay of Proceedings**”) to and including July 1, 2023 (the “**Stay Period**”);

- b) approved the Applicants' use of the Cash Management System (as defined below);
 - c) granted charges on the Applicants' current and future assets, property and undertaking (collectively, the "**Property**") in the following amounts and priority:
 - i. first, a charge in the amount of \$250,000 in favour of the Applicants' legal counsel (Miller Thomson LLP ("**Miller Thomson**")), the Monitor, and the Monitor's legal counsel (Cassels Brock & Blackwell LLP ("**Cassels**")), to secure the fees and disbursements of those firms (the "**Administration Charge**");
 - ii. second, a charge in the amount of \$55 million plus interest, fees and expenses for all post-filing advances (the "**Lender Priority Charge**") made by CIBC under the existing CIBC Credit Agreement (as defined in the Initial Order), as amended pursuant to the terms of the Forbearance Agreement dated June 22, 2023 (the "**Forbearance Agreement**");
 - iii. third, a charge in the amount of \$3.33 million in favour of the directors and officers of the Applicants (the "**D&O Charge**"); and
 - iv. fourth, a charge in the amount of \$18 million in favour of provincial and territorial authorities in respect of the amounts required to be remitted by the Logistics Companies under the *Tobacco Tax Act*, RSA 2000, c. T-4 or under any other applicable provincial legislation or laws (the "**Tobacco Tax Charge**", and collectively with the Lender Priority Charge, the Administration Charge and the D&O Charge, the "**Initial Order Charges**"); and
 - d) permitted the Logistics Companies to pay certain pre-filing tobacco tax obligations pursuant to the Tobacco Tax Payment Plans (as defined in the Initial Order), subject to first obtaining the Monitor's consent.
2. On June 30, 2023, the Applicants' comeback application was heard (the "**Comeback Application**") and the Court granted:
- a) an amended and restated Initial Order (the "**ARIO**") (**Appendix "A"**) which, among other things:
 - i. extended the Stay Period to and including September 20, 2023;

- ii. increased the maximum amount of the following Initial Order Charges as follows:
 - Administration Charge to \$750,000;
 - D&O Charge to \$4 million; and
 - Tobacco Tax Charge to \$25 million; and
 - b) an Order providing for the Applicants' continued access to Mobil Fleet Cards (**Appendix "B"**).
3. The principal purpose of these CCAA proceedings is to create a stabilized environment to enable the Applicants to continue to operate in the normal course while completing and implementing certain strategic restructuring initiatives. The Applicants have advised the Monitor that they intend to file a plan of arrangement for consideration by their creditors ("**Plan**").
4. Pursuant to the Forbearance Agreement, CIBC required the Applicants to achieve certain milestones by August 1, 2023 (the "**First Milestone Deadline**"). The Applicants did not achieve those milestones. CIBC has advised the Applicants that a further amendment to the Forbearance Agreement (which is the process of being negotiated) will require the Applicants to forthwith commence a sale and investment solicitation process (a "**SISP**"), which is intended to be carried out subject to sufficient liquidity being available to the Applicants. Subject to Court approval, a SISP would provide for a dual-track process whereby the Applicants have the opportunity to file a Plan, while a sale process for the Applicants' business and assets is contemporaneously carried out. As of the date of this Second Report, the Applicants are in the process of finalizing an engagement letter for a financial advisor who would be responsible for conducting the SISP, subject to Court approval.

1.2 Purposes of this Second Report

1. The purposes of this Second Report are to:
 - a) provide the Court and stakeholders with an update on the Applicants' and the Monitor's activities since the date of the First Report;
 - b) discuss the challenges presently being faced by the Applicants; and

- c) provide a comparison of the Applicants' Initial Cash Flow Forecast to their actual results.

1.3 Scope and Terms of Reference

1. In preparing this Second Report, the Monitor has relied upon the Applicants' unaudited financial information, books and records, and discussions with the Applicants' management and legal counsel.
2. The Monitor has not audited or otherwise attempted to verify the accuracy or completeness of the financial information relied on to prepare this Second Report in a manner that complies with Canadian Auditing Standards ("**CAS**") pursuant to the Chartered Professional Accountants of Canada Handbook and, accordingly, the Monitor expresses no opinion or other form of assurance contemplated under the CAS in respect of such information. Any party wishing to place reliance on the financial information should perform its own diligence.
3. An examination of the Initial Cash Flow Forecast and a subsequent cash flow forecast prepared by the Applicants in accordance with the terms of the Forbearance Agreement (the "**Second Cash Flow Forecast**"), as outlined in the Chartered Professional Accountants of Canada Handbook, has not been performed. Future oriented financial information relied upon in this Second Report is based upon the Applicants' assumptions regarding future events; actual results achieved may vary from this information and these variations may be material. The Monitor expresses no opinion or other form of assurance on whether the Applicants will perform in accordance with their cash flow projections.

1.4 Currency

1. All currency references herein are in Canadian dollars.

2.0 Background

1. CMI is an Alberta corporation and the sole shareholder of Wallace & Carey, which is the sole shareholder of Loudon Bros. In addition to the Logistics Companies, CMI has ownership interests in nine other entities, none of which are subject to these proceedings (collectively with the Applicants, the "**Carey Group**").

2. Wallace & Carey is an Alberta corporation that is extra-provincially registered to conduct business in most provinces and territories in Canada. Wallace & Carey operates from nine leased warehouses.
3. Loudon Bros, located in Thunder Bay, Ontario, is an Ontario corporation that is wholly owned by Wallace & Carey. Loudon Bros is managed by Wallace & Carey and operates as its Northwestern Ontario branch.
4. The Logistics Companies operate an integrated business that supplies and distributes more than 7,500 different products to approximately 7,000 customer locations across the country. The Logistics Companies are important suppliers to their customers, who depend on the continued operation of the Logistics Companies' business.
5. The Logistics Companies employ more than 600 full-time and 50 part-time employees. CMI has three employees, including Patrick Carey, the Chair, and Daniel Elrod, the Chief Executive Officer of CMI.
6. CIBC provides CMI with a revolving asset-based loan facility (the "**CIBC Facility**"), which is guaranteed by the Logistics Companies and various other entities within the Carey Group. As of the date of this Second Report, the amount owing under the CIBC Facility was \$15,171,548.90. Additionally, CIBC is owed \$4,861,111.12 under another secured facility, which ranks *pari passu* with the CIBC Facility.
7. Affidavit No. 1 of Brian Birnie, Senior Vice President of Finance & Corporate Development of the Applicants, and Chief Financial Officer of Wallace & Carey, sworn June 21, 2023 in support of the CCAA application (the "**First Birnie Affidavit**"), provides, *inter alia*, background information concerning the Applicants, their respective businesses, as well as the reasons for the commencement of these proceedings. Affidavit No. 2 of Brian Birnie sworn on June 27, 2023 (the "**Second Birnie Affidavit**"), provided support for the relief sought by the Applicants at the Comeback Application and attached a copy of the Forbearance Agreement.
8. The Pre-Filing Report provided additional background information about these proceedings. The First Report provided the Monitor's rationale for its support of the relief sought by the Applicants at the Comeback Application.

9. The Court materials filed in these proceedings, including the First Report and Pre-Filing Report, are available on the Monitor's case website at: ksvadvisory.com/experience/case/wallace-and-carey.

3.0 Update on the Applicants' Activities since the Filing Date

1. Since the Filing Date, the Applicants have, among other things:
- a) continued to operate the Logistics Companies;
 - b) engaged with the Monitor concerning these proceedings, including dealings with employees, customers and suppliers;
 - c) implemented at the outset of these proceedings a communication plan to employees, customers and suppliers, including convening town hall meetings with employees in the Applicants' various locations;
 - d) provided reporting to CIBC as required pursuant to the Forbearance Agreement and engaged in discussions with CIBC regarding certain amendments to the Forbearance Agreement, as discussed further below;
 - e) dealt with suppliers to secure goods and services;
 - f) engaged in negotiations and discussions with customers, including its largest customer, 7-Eleven Canada, Inc. ("**7-11**"), concerning, among other things, an extension, pursuant to a Short Term Extension Agreement (the "**ST Extension Agreement**"), to January 31, 2024 of the termination date of a Service Agreement between Wallace & Carey and 7-11 dated February 6, 2006, as amended (the "**Service Agreement**"), which Service Agreement was to terminate on July 31, 2023;
 - g) engaged in discussions with prospective financial advisors, as discussed further below;
 - h) considered issues relevant to filing a Plan, including drafting a business plan and preparing a five-year financial forecast to support a Plan, particularly in the context of the First Milestone Deadline; and

- i) engaged in discussions with various prospective lenders and other parties in the context of the Plan and to provide additional funding to the Applicants during these proceedings.

4.0 Monitor's Activities since the First Report

1. The Monitor's activities from the commencement of these proceedings to the date of the First Report (June 28, 2023) were summarized in the First Report. Since the date of the First Report, the Monitor has, among other things:
 - a) communicated routinely with the Applicants' management team regarding all aspects of these proceedings;
 - b) monitored the Applicants' receipts and disbursements, as required under the Forbearance Agreement;
 - c) assisted the Applicants in their reporting to CIBC, as required, pursuant to the Forbearance Agreement;
 - d) attended weekly status calls with CIBC;
 - e) engaged in discussions with CIBC, its financial advisor, PricewaterhouseCoopers LLP, and its legal counsel, Norton Rose Fulbright LLP, including in respect of the reporting required under the Forbearance Agreement and certain proposed amendments thereto, as well as the status of the Applicants' progress in these proceedings;
 - f) engaged in, and assisted the Applicants with, discussions with key suppliers of the Logistics Companies;
 - g) participated in discussions with various customers of the Applicants, including with respect to payment terms and "fill rates" and provided its consent to the requests of three small customers to temporarily source supply from alternative suppliers. A copy of an example of such consent is attached hereto as **Appendix "C"**;
 - h) engaged extensively with 7-11 and its counsel concerning all aspects of these proceedings, including the ST Extension Agreement;

- i) engaged with its counsel, Cassels, and the Applicants' counsel, Miller Thomson, regarding various matters relating to these proceedings;
- j) considered issues related to a Plan, including recoveries for the Applicants' creditors under various scenarios;
- k) assisted the Applicants in preparing the Second Cash Flow Forecast, being an extended weekly cash flow forecast, which the Applicants were required to prepare pursuant to the Forbearance Agreement;
- l) maintained the case website;
- m) considered the Applicants' liquidity issues and assisted to identify and diligence funding solutions; and
- n) prepared this Second Report.

5.0 Liquidity Issues

1. Following the granting of the ARIO, the Applicants advised the Monitor that the Logistics Companies were required to enter into prepay arrangements with substantially all of their vendors for post-filing goods and services, rather than pay on cash on delivery ("**COD**"), which was the basis on which the Initial Cash Flow Forecast had been prepared. The prepayment terms impaired the Applicants' liquidity due to the significant lead times associated with sourcing inventory from certain of the Applicants' vendors. Under the terms of the CIBC Credit Facility, the Applicants were unable to borrow against this prepaid inventory until it was received by the Logistics Companies, which reduced the Logistics Companies' borrowing capacity. Since then, the Logistics Companies' inability to source fresh inventory on a continuous basis has caused sales and cash receipts to vary negatively from the Initial Cash Flow Forecast. As a result, many of the Logistics Companies' customers have experienced lower fill rates than they require.
2. On July 18, 2023, the Applicants and CIBC entered into an amendment agreement (the "**First Forbearance Amendment**"). Pursuant to the First Forbearance Amendment, CIBC provided certain accommodations to the Applicants in order to address the liquidity issues that resulted from the pre-pay terms referenced above. Among other things, the First Forbearance Amendment:

- a) permitted “Eligible Undelivered Inventory” to be added to the Borrowing Base (both as defined in the First Forbearance Amendment) against which CIBC advances under the CIBC Credit Facility, provided that the Applicants received acknowledgements from the vendors that (i) they would not setoff the prepayment against amounts owing to them from the Applicants; and (ii) title to the relevant inventory transfers to the Applicants upon receipt of payment; and
- b) required the Applicants to identify and select a financial advisor to conduct the SISF by no later than 40 days following the date of the hearing of the application for the Initial Order (i.e., by August 1, 2023).

A copy of the First Forbearance Amendment is attached hereto as **Appendix “D”**.

- 3. In addition to the above accommodations from CIBC, the Applicants have worked with suppliers to improve credit and other supply terms, including entering into consignment agreements and accelerated payment arrangements with certain tobacco suppliers, as well as accelerated payment terms with certain customers. The Monitor has also facilitated certain transactions, including putting in place payment mechanisms for suppliers so that they could supply on terms and product delivery protections for customers who pay on an expedited basis.
- 4. The Applicants’ ongoing liquidity difficulties caused them to fail to comply with certain financial covenants under the Forbearance Agreement for the weeks ended July 22 and 29, 2023, including negative cash receipts variances, which is a default under the Forbearance Agreement. A comparison of the Applicants’ actual cash flow to the Initial Cash Flow Forecast is provided in Section 6 below.
- 5. As a result of the defaults, on August 2, 2023, CIBC delivered to the Applicants a notice that certain Terminating Events (as defined in the Forbearance Agreement) had occurred and that CIBC was reserving all rights in respect of such (the “**August 2 Notice**”). A copy of the August 2 Notice is attached hereto as **Appendix “E”**.
- 6. Following delivery of the August 2 Notice, CIBC issued a letter to the Applicants and the Monitor (the “**August 4 Letter**”) which, among other things, advised that:
 - a) CIBC was prepared to further amend the Forbearance Agreement; and

- b) CIBC would continue to make the Revolving Loans (as defined in the Forbearance Agreement) available, subject to certain restrictions, until further written notice is delivered by CIBC to the Applicants (with a copy to the Monitor) and at least two business days following the delivery of the written notice has passed, during which time CIBC agreed to continue to fund Revolving Loans provided that such amounts shall not exceed that required for critical ordinary course post-filing operating expenditures that are due and payable and approved by the Monitor.

A copy of the August 4 Letter is attached hereto as **Appendix “F”**.

- 7. Notwithstanding the defaults, CIBC has (i) continued funding the Applicants, in accordance with the lending formula prescribed in the Forbearance Agreement and the First Forbearance Amendment; and (ii) displayed a willingness to work with the Applicants to find solutions to their liquidity challenges.
- 8. On August 8, 2023, Cineplex Entertainment Limited Partnership (“**CPX**”) delivered correspondence to Wallace & Carey and the Monitor requesting that consent be provided to CPX terminating its agreement with Wallace & Carey effective as of September 15, 2023. Wallace & Carey remains in discussions with CPX regarding the request and supply of product to CPX.
- 7. As of the date of this Second Report, negotiations are ongoing among the Applicants, CIBC and other parties to secure additional capital for the Applicants. The Monitor intends to file a further report advising of the outcome of these negotiations.

6.0 Performance Against the Initial Cash Flow Forecast

1. A summary of the Applicants' actual receipts and disbursements compared to the Initial Cash Flow Forecast for the period of June 18 to July 29, 2023 (the "Initial Reporting Period") is as follows:

In \$000's	Actual	Initial Cash Flow Statement	Variance
Receipts	168,155	189,711	(21,556)
Operating Disbursements	(155,566)	(182,524)	26,958
Other Disbursements	(1,304)	(1,724)	420
Net Cash Flow	11,285	5,463	5,822

2. For the Initial Reporting Period, total cash receipts were approximately \$21.56 million less than forecasted in the Initial Cash Flow Forecast. There has been a corresponding reduction in disbursements, largely due to lower inventory purchases and positive timing differences in respect of certain other payments. The low inventory purchases have resulted in lower than projected sales, and a corresponding reduction in customer fill rates.

7.0 Second Cash Flow Forecast

1. As required under the Forbearance Agreement, on July 27, 2023, the Applicants prepared the Second Cash Flow Forecast for the period of July 23 to October 28, 2023 (the "Second Cash Flow Period").
2. The Second Cash Flow Forecast reflects that the Applicants are projected to have sufficient liquidity to continue to operate during the Second Forecast Period, subject to CIBC continuing to fund under the CIBC Facility. The Applicants will, however, require additional capital for sales and fill rates to improve. Discussions are ongoing, in real time, to provide the Applicants with such needed additional capital.

8.0 Conclusion

1. The Monitor is directly involved in discussions that could see a material capital injection into the business in the coming days. The Monitor intends to file a further report in that regard as soon as those discussions are completed. In the meantime, CIBC is continuing to provide funding to the Applicants in accordance with the terms of the Forbearance Agreement, the First Forbearance Amendment, and a second amendment which the Applicants and CIBC are currently negotiating. It is the Monitor's expectation that a SISP will commence forthwith if the negotiations around additional liquidity are successful.

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

**KSV RESTRUCTURING INC.,
in its capacity as monitor of
Wallace & Carey Inc., Loudon Bros Limited, and Carey Management Inc.
and not in its personal capacity**

Appendix “A”



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 counsel for other interested parties;

AND UPON reviewing the Affidavit of Service of Marica Ceko sworn June 28, 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, except for the security registrations in relation to equipment leased from equipment lessors, 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 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.



Justice of the Court of King's Bench of Alberta

Appendix “B”



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

ADDRESS FOR SERVICE AND CONTACT
INFORMATION OF PARTY FILING THIS
DOCUMENT

MILLER THOMSON LLP
3000, 700 - 9th Avenue S.W.
Calgary, AB, Canada T2P 3V4

Attention: James W. Reid / Larry Ellis

Telephone: 403.298.2418 / 416-595-8639

Fax: 403.262.0007

E-mail: jwreid@millerthomson.com
lellis@millerthomson.com

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 hearing counsel for the Applicants, and counsel for the Monitor;

AND UPON reviewing the Secretarial Affidavit of Shirley Peloski sworn June 30, 2023;

IT IS HEREBY ORDERED AND DECLARED THAT:

1. Upon the Applicants prepaying an amount of \$100,000 (the “**Prepay Funds**”) to counsel to the Monitor in trust for the benefit of WEX Canada Inc., WEX Inc., Imperial Oil Limited, Exxon Mobil Corporation, any other related entity, as applicable (collectively, the “**WEX Entities**”), the applicable WEX Entity(s) is hereby directed forthwith to reactivate or otherwise reinstate all Mobil Fleet Cards or any other products issued and used by the Applicants that were cancelled or terminated pursuant to the Applicants filing under these proceedings.
2. Upon being advised of the appropriate account to direct the Prepay Funds by the beneficiaries of the Prepay Funds, counsel to the Monitor is hereby directed to release the funds to such account.
3. In order to ensure the Applicants have continued access to the Mobil Fleet Cards throughout these proceedings, after the Prepay Funds are within \$10,000 of being exhausted or spent on the Mobil Fleet Cards, the applicable WEX Entity(s) may require a further prepayment amount from the Applicants, however, such Mobil Fleet Cards shall not be cancelled, terminated, or frozen at anytime unless the Prepay Funds are exhausted or further order of this Court.
4. Any of the WEX Entities, the Applicants or the Monitor may apply to vary or amend this Order 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.
5. This Order and all of its provisions are effective as of 12:01 a.m. Mountain Standard Time on the date of this Order.


Justice of the Court of King's Bench of Alberta

Appendix “C”

[REDACTED]

From: Jason Knight
Sent: July 31, 2023 5:02 PM
To: [REDACTED]
Cc: Bobby Kofman; David Sieradzki; Christian Vit; Eric Rolheiser
Subject: RE: Wallace & Carey - [REDACTED]

[REDACTED]

As discussed, KSV Restructuring Inc. is the court-appointed Monitor (the “**Monitor**”) of Wallace & Carey Inc., Loudon Bros. Limited and Carey Management Inc. (collectively, the “**Companies**”) in the CCAA proceedings of the Companies (Court of King’s Bench of Alberta File No. 2301-08305). As Monitor, we consent to lift the stay of proceedings (the “**Stay**”) contained in paragraph 18 of the Amended and Restated Initial Order pronounced June 30, 2023 (the “**ARIO**”) on the following terms:

1. Subject to paragraph 3, the Stay is hereby lifted for the sole purpose of permitting [REDACTED] (the “**Customer**”), to purchase cigarettes from a source other than the Companies (the “**Alternate Source**”) on an interim basis.
2. This limited lifting of the Stay shall expire immediately upon the Companies notifying the Customer that the Companies can resume servicing the Customer, at which time the Customer shall resume purchasing cigarettes (and other products, to the extent applicable) from the Companies and immediately cease purchasing cigarettes (and other products, to the extent applicable) from the Alternate Source.
3. **Notwithstanding the consent to lift the Stay, the Customer hereby confirms that it will pay in the normal course all accounts payable for product shipped to the Customer as of the date of this email (whether or not the Companies’ invoices have been received by Customer), without setoff or deduction for any reason.**
4. For the within limited lifting of the stay to be effective, both you and the Companies must also respond to this email confirming that each agrees with the terms of this arrangement. The Monitor is also copying a representative of the Companies on this correspondence, so that the Companies may reply with their confirmation.

Kindly respond to this email by stating “**acknowledged and confirmed**”.

Best,
- Jason

Jason Knight
Managing Director
KSV Advisory Inc.
T 587.287.2605
M 403.589.3225
E jknight@ksvadvisory.com

Appendix “D”

FORBEARANCE AGREEMENT

THIS AGREEMENT is dated as of June 22, 2023.

AMONG:

CAREY MANAGEMENT INC.
(the "**Borrower**")

- and -

THE GUARANTORS FROM TIME TO TIME PARTY HERETO

- and -

CANADIAN IMPERIAL BANK OF COMMERCE, as Agent
(the "**Agent**")

- and -

THE LENDERS FROM TIME TO TIME PARTY TO THE CREDIT AGREEMENT
(the "**Lenders**")

CONTEXT:

- A.** The Agent and the Lenders have provided certain financing arrangements under a Credit Agreement dated as of September 26, 2017 among the Borrower, the guarantors party thereto, the Agent and the lenders party thereto from time to time (as amended by Amendment No. 1 to Credit Agreement dated May 3, 2018, First Amendment to Credit Agreement dated January 1, 2019, Amendment No. 2 and Consent and Waiver to Credit Agreement dated December 31, 2019, Fourth Amendment to Credit Agreement dated September 2, 2020, Fifth Amendment to Credit Agreement dated March 31, 2021, Sixth Amendment to Credit Agreement dated May 28, 2021, Seventh Amendment and Consent dated October 29, 2021, Eight Amendment to Credit Agreement dated April 4, 2022, Ninth Amendment to Credit Agreement dated January 23, 2023 and as the same may be further amended, restated, supplemented, revised, replaced or otherwise modified from time to time, the "**Credit Agreement**").
- B.** As of the date of this Agreement, the Credit Parties are in default under the Credit Agreement and the other Loan Documents, which default constitutes one or more events of default thereunder as set out in Schedule 3 hereto, and in addition, the Borrower has advised the Agent of the occurrence of potential liquidity shortfalls that would be considered Defaults that with the passage of time would be Events of Default, and that could have a material impact on the ability of the Credit Parties to continue business as a going concern.
- C.** The conditions to the obligation of the Lenders to make Loans as set out in Section 4.2 of the Credit Agreement are not satisfied at this time (the "**Draw Conditions**"). As a result, the Lenders are not obligated at this time to make further advances of Loans under the Credit Agreement.
- D.** Certain of the Credit Parties, being the Borrower, Wallace & Carey Inc. and Loudon Bros Limited (the "**Applicants**") are applying to the Alberta Court of King's Bench (the "**CCAA Court**") for an initial order (as amended, supplemented or otherwise modified from time to time, the "**Initial Order**") under the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**") (such proceedings being the "**CCAA Proceedings**") on or about June 22, 2023 and the Credit Parties have requested ongoing support of the Agent and the Lenders during the CCAA Proceedings. The primary purpose

of the CCAA Proceedings is to give effect to a process for Wallace & Carey Inc. and Loudon Bros Limited to pursue potential transactions to restructure certain unsecured debt (a “**Plan**”) or otherwise restructure the business of the Credit Parties.

- E. The Credit Parties require funding to implement the restructuring process and have concluded that the Agent and the Lenders are the most cost effective and timely source of working capital funding that is available and appropriate in the circumstances of the Applicants in the CCAA Proceedings.
- F. The Credit Parties have requested that the Agent and the Lender continue to make available to the Borrower credit facilities under the Credit Agreement to fund working capital requirements during the CCAA Proceedings.
- G. The Credit Parties have further requested that the Agent and the Lenders forbear from exercising the Agent’s and the Lenders’ rights arising as a result of (i) the Existing Defaults (as defined below); and (ii) the commencement and existence of the CCAA Proceedings.
- H. The Borrower, the Agent and the Lenders have agreed, subject to the terms and conditions herein, that the Lenders will continue to make available to the Borrower certain Borrowings under the Credit Agreement during the Forbearance Period (as defined below), subject to the terms and conditions set out herein, for the Borrower’s working capital purposes, notwithstanding the failure of the Borrower to satisfy the Draw Conditions as a result of, among other things, the Existing Defaults and Events of Default that would arise from the CCAA Proceedings.
- I. The Agent and the Lenders are willing to forbear from exercising their rights and remedies and to provide certain Borrowings to the Borrower during the Forbearance Period (as defined below) subject to the terms and conditions set out herein.

THEREFORE, the Parties agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Credit Agreement Definitions

Each capitalized term used and not otherwise defined in this Agreement will have the meaning assigned to it in the Credit Agreement.

1.2 Other Definitions

In this Agreement the following terms have the following meanings:

- (a) “**ABL DIP Fee**” is defined in Section 3.3(a).
- (b) “**ABL DIP Priority Charge**” is defined in Section 7.1(v)(b).
- (c) “**Additional Default**” means: (i) a Credit Party’s default or failure to comply with any of the terms, conditions or covenants under this Agreement, or (ii) a Default by a Credit Party under the Credit Agreement or any other Loan Document prior to or on or after the date of this Agreement (other than an Existing Default).
- (d) “**Agreement**” means this agreement, including all Schedules, as it may be modified, amended, revised, restated, replaced, supplemented or otherwise changed from time to time and at any time hereafter, in writing, by the Parties.

- (e) **"Alberta Tobacco Tax Payment Plan"** means the payment arrangements between Wallace & Carey Inc. and the Government of Alberta pursuant to which the Credit Parties agreed to make weekly payments of \$2,000,000 (of which \$250,000 is on account of arrears) owing under the *Tobacco Tax Act*, RSA 2000, c T-4.
- (f) **"Applicants"** is defined in "Context" above.
- (g) **"Approved Cash Flow"** means the approved (by the Agent) rolling 13-week cash flow forecast of the Applicants in form and substance satisfactory to the Agent, which forecast shall also include the forecasted inventory, forecasted Borrowings and forecasted Borrowing Base for each week, which is attached as Schedule 6 hereto for the weeks June 23, 2023 to September 23, 2023.
- (h) **"CCAA"** is defined under "Context" above.
- (i) **"CCAA Court"** is defined under "Context" above.
- (j) **"CCAA Proceedings"** is defined under "Context" above.
- (k) **"Claims"** and **"Claim"** are defined in Section 8.3(a).
- (l) **"Communication"** means any notice, demand, request, consent, approval or other communication, which is required or permitted by this Agreement to be given or made by a Party.
- (m) **"Conditions Precedent"** is defined in Section 7.1.
- (n) **"Court Order"** means an order of the CCAA Court.
- (o) **"Credit Agreement"** is defined under "Context" above.
- (p) **"Draw Conditions"** is defined under "Context" above.
- (q) **"Existing Defaults"** means the Defaults or Events of Default under the Credit Agreement set out in Schedule 3 attached hereto, and any Default or Event of Default arising solely as a result of the commencement of the CCAA Proceedings in accordance with the terms hereof.
- (r) **"Existing Indebtedness"** means the outstanding Obligations existing as at the date hereof as more particularly described in Schedule 1.
- (s) **"Existing Security"** is defined in Section 2.4.
- (t) **"Forbearance Period"** is defined in Section 3.1(a).
- (u) **"Initial Order"** is defined under "Context" above.
- (v) **"Loan Documents"** has the meaning given thereto in the Credit Agreement and includes, without limitation, this Agreement.
- (w) **"Mortgaged Properties"** means the real property (including fixtures thereto) listed on Schedule 4 and identified as such thereon as updated from time to time with the consent of the Agent, owned by the Borrower or a Guarantor.
- (x) **"Net Cash Flow"** means the cumulative net cash flow measured and reported weekly on a cumulative basis.

- (y) **"Parties"** means, collectively, the Credit Parties, the Agent and the Lenders; and **"Party"** means any one of them.
- (z) **"Plan"** is defined under "Context" above.
- (aa) **"Pre-Filing Payments Order"** is defined in Section 4.1(d)(iv).
- (bb) **"Releasees"** and **"Releasee"** are defined in Section 8.3(a).
- (cc) **"Saskatchewan Tobacco Tax Payment Plan"** means the payment arrangement evidenced by the letter dated February 15, 2023 from the Government of Saskatchewan to Wallace & Carey Inc. regarding the payment of arrears owing under the *Tobacco Tax Act*, RSA 2000, c T-4.
- (dd) **"Tobacco Tax Payment Plans"** means, collectively, the Alberta Tobacco Tax Payment Plan and the Saskatchewan Tobacco Tax Payment Plan.
- (ee) **"Termination Date"** is defined in Section 5.3.
- (ff) **"Terminating Event"** is defined in Section 5.4.

1.3 Entire Agreement

This Agreement, together with the Credit Agreement and the other Loan Documents and the other agreements and documents to be delivered under this Agreement, constitute the entire agreement between the Parties pertaining to the subject matter of this Agreement and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties, and there are no representations, warranties or other agreements between the Parties in connection with the subject matter of this Agreement except as specifically set out in this Agreement, the Credit Agreement, the other Loan Documents or the other agreements and documents delivered under this Agreement.

1.4 Business Day

Whenever any payment to be made or action to be taken under this Agreement is required to be made or taken on a day other than a Business Day, the payment is to be made or action taken on the next Business Day following.

1.5 Certain Rules of Interpretation

- (a) In this Agreement, words signifying the singular number include the plural and vice versa, and words signifying gender include all genders. Every use of the word "including" in this Agreement is to be construed as meaning "including, without limitation".
- (b) The division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement.
- (c) References in this Agreement to an Article, Section, Schedule or Exhibit are to be construed as references to an Article, Section, Schedule or Exhibit of or to this Agreement unless the context requires otherwise.
- (d) Unless otherwise specified in this Agreement, time periods within which or following which any payment is to be made or act is to be done will be calculated by excluding the day on which the period commences and including the day on which the period ends. If the last day of a time period is not a Business Day, the time period will end on the next Business Day.

- (e) Unless otherwise specified, any reference in this Agreement to any (a) statute includes all regulations made under that statute, and is to be construed as a reference to that statute as amended, supplemented or replaced from time to time, and (b) to any agreement means such agreement as amended, supplemented, restated, or replaced subject to compliance with any restrictions thereon in the Loan Documents.
- (f) Unless otherwise specified, the word "dollar" and the "\$" sign refer to Canadian currency, and all amounts to be advanced, paid, tendered or calculated under this Agreement are to be advanced, paid, tendered or calculated in Canadian currency.

1.6 Schedules and Exhibits

The following is a list of the Schedules and Exhibits attached hereto:

Schedule	Subject Matter
Schedule 1	Existing Indebtedness
Schedule 2	Existing Security
Schedule 3	Existing Defaults
Schedule 4	Mortgaged Properties
Schedule 5	Restructuring Timeline
Schedule 6	Approved Cash Flow

ARTICLE 2 ACKNOWLEDGMENT

2.1 Acknowledgement of Obligations

Each Credit Party confirms, acknowledges and agrees that the Existing Indebtedness as of the date of this Agreement is as set out in Schedule 1 attached hereto.

2.2 Continuing Effect of Amendments

The Parties hereto each acknowledge, confirm and agree that the Credit Agreement and the other Loan Documents remain in full force and effect as at the date hereof, except as specifically amended by this Agreement. The Credit Agreement shall henceforth be read and construed in conjunction with this Agreement.

2.3 Other Confirmations and Acknowledgements

Each Credit Party confirms, acknowledges and agrees that:

- (a) each of the recitals in the "Context" is true and correct;
- (b) the Existing Defaults (other than the Default or Event of Default arising solely from the commencement of the CCAA Proceedings) have occurred and are continuing and, as of the date of this Agreement, no Default or Event of Default, other than the Existing Defaults, exists under the Credit Agreement or any other Loan Document;

- (c) the Agent and the Lenders have not waived the Existing Defaults and nothing contained in this Agreement or the transactions contemplated by this Agreement will be deemed to constitute any such waiver, and the Credit Parties acknowledge, confirm and agree that notwithstanding any provision of the Credit Agreement to the contrary, the Agent and the Lenders shall be under no obligation to continue the Commitments following the Forbearance Period and shall only continue the Commitments during the Forbearance Period subject to the terms and conditions of this Agreement;
- (d) interest and fees will accrue on the Existing Indebtedness under the Credit Agreement and the other Loan Documents in accordance with the terms set out herein;
- (e) KSV Advisory Inc. has been retained by the Applicants, and has been appointed as the financial advisor to the Applicants and the Agent has retained and is entitled to continue to retain PricewaterhouseCoopers Inc., as financial advisor and any other advisors as the Agent may require at the cost of the Credit Parties;
- (f) KSV Advisory Inc. (the "**Monitor**") is the proposed monitor under the Initial Order in the CCAA Proceedings and has consented to act in such capacity;
- (g) each Credit Party consents to the immediate enforcement of all or any part of the rights and remedies accorded to the Agent and the Lenders under the Credit Agreement and the other Loan Documents and Applicable Law in any manner determined by the Agent and the Lenders upon the expiry of the Forbearance Period;
- (h) each Credit Party will grant all access and provide, on reasonable notice during regular business hours, all information and documentation to, and will otherwise cooperate fully with, the Agent and the Lenders and PricewaterhouseCoopers Inc., as the Agent's advisor, and pay all reasonable fees and disbursements of each consultant or advisor appointed by the Agent or the Lenders as the Agent or the Lenders may require; and pay, in accordance with the Approved Cash Flow, as the case may be, all reasonable fees and disbursements of the Monitor and the Monitor's counsel;
- (i) except for obligations in respect of accrued unpaid tobacco sales taxes not to exceed \$10,653,860.42, which are the subject of the Tobacco Tax Payment Plans, as at the date of this Agreement, the Credit Parties have paid or caused to be paid and satisfied when due all amounts in respect of income taxes, provincial sales taxes, tobacco taxes and other excise taxes, GST, HST, employee payroll remittances, employee wages and other obligations which have or may constitute a Priority Payable;
- (j) neither the Borrower, nor any other Credit Party has received, or is aware of any pending issuance of, any notice of garnishment from a Governmental Authority;
- (k) the Agent has and will continue to have valid, enforceable and perfected first ranking Liens, subject to Permitted Liens, over and in respect of the Collateral as continuing and collateral security for the Obligations and all other amounts owing from time to time under this Agreement, the Credit Agreement and the other Loan Documents, and subject to any court-ordered charge(s) approved by the Agent and the Lender and granted by the CCAA Court;
- (l) the Credit Agreement, the other Loan Documents to which each Credit Party is party and this Agreement are in full force and effect and constitute legal, valid and binding obligations of each Credit Party, enforceable against each such Credit Party in accordance with their respective terms;
- (m) the Credit Parties do not have any valid claim for set-off, counter-claim, damages or other defence on any basis whatsoever against the Agent and the Lenders and if there are any such claims, then each Credit Party hereby expressly waives and releases them to the fullest extent permitted under Applicable Law;

- (n) the Agent and the Lenders are and will be entitled to the rights, remedies and benefits provided for in this Agreement, the Credit Agreement and the other Loan Documents subject to Applicable Law;
- (o) the Approved Cash Flow existing as at the date hereof covers the period from June 23, 2023 to September 23, 2023;
- (p) this Agreement constitutes a Loan Document for all purposes of the Credit Agreement and the other Loan Documents.

2.4 Security

The Credit Parties acknowledge and agree that, in addition to the security created pursuant to the ABL DIP Priority Charge, the Security Documents delivered to, and Liens granted therein to, the Agent (including, without limitation, each Guarantee delivered by each Guarantor) as listed in Schedule 2 attached hereto (collectively, the “**Existing Security**”) shall stand as security for the payment and performance of each and every one of the Credit Parties’ obligations and indebtedness to the Agent and the Lenders.

ARTICLE 3 FORBEARANCE, FEES AND INTEREST, AND COMMITMENTS

3.1 Forbearance

- (a) In reliance upon the acknowledgments, confirmations, representations, warranties and covenants of the Credit Parties contained in this Agreement, and subject to the terms and conditions of this Agreement and any documents or instruments executed in connection with this Agreement, the Agent and the Lenders agree to forbear from exercising their rights and remedies under the Credit Agreement and the other Loan Documents and/or Applicable Law in respect of or arising out of or relating to the Existing Defaults, subject to the conditions, amendments and modifications contained in this Agreement, during the period (the “**Forbearance Period**”) commencing on the date of this Agreement and ending on the Termination Date.
- (b) On the last day of the Forbearance Period, the agreement of the Agent and the Lenders to forbear will automatically and without further action terminate and be of no further force or effect, it being expressly agreed that the effect of that termination will be to permit the Agent and the Lenders to immediately exercise all or any part of their rights and remedies under this Agreement, the Credit Agreement, the other Loan Documents and Applicable Law (whether against all or any combination of the Credit Parties), including without limitation:
 - (i) to immediately terminate the Commitments and cease to permit any further Borrowings, upon which no further credit will be available thereunder;
 - (ii) to demand immediate payment of all of the Obligations and enforce all of the Agent’s rights and remedies under this Agreement, the Credit Agreement, the other Loan Documents and Applicable Law, in each case without any further notice, passage of time or forbearance of any kind; and
 - (iii) to appoint a receiver, interim receiver or receiver and manager of any of the Credit Parties pursuant to this Agreement, the Credit Agreement, the other Loan Documents or Applicable Law (or apply to a court of competent jurisdiction to do so).

3.2 No Other Waivers; Reservation of Rights

The Agent and the Lenders have not waived, and are not by this Agreement or the implementation of this Agreement waiving, any Existing Default or any Additional Default (whether the same or similar to the Existing Defaults or otherwise), and the Agent and the Lenders have not agreed to forbear with respect to

any of their rights or remedies concerning any Additional Default (whether the same or similar to the Existing Defaults or otherwise) which may have occurred or be continuing as of the date of this Agreement or which may occur or be continuing after the date of this Agreement. The Agent and the Lenders have not waived any of such rights or remedies, and nothing in this Agreement, and no delay on their part in exercising any such rights or remedies, should be construed as a waiver of those rights or remedies.

3.3 Fees and Interest

- (a) In consideration of the agreements set out in this Agreement, the Borrower agrees to pay to the Agent, a fee for the benefit of the Revolving Lenders in the amount of \$1,000,000 which shall be fully earned upon execution of this Agreement and payable in four equal instalments of \$250,000 on July 21, 2023, August 21, 2023, September 21, 2023, and October 21, 2023 (the “**ABL DIP Fee**”); provided, however, that the ABL DIP Fee, excluding a \$100,000 portion of that fee which is non-refundable, shall be refunded to the Borrower upon: (i) implementation of a Plan in form and substance acceptable to the Agent and in connection therewith a refinancing of all of the Obligations on or prior to November 30, 2023; or (ii) the indefeasible repayment in full of the Obligations, including the BCAP Loan, on or prior to November 30, 2023.
- (b) Subject to subsection 3.3(a), the ABL DIP Fee is in addition to all other fees (including legal fees), interest, costs, expenses and other amounts payable in connection with this Agreement, the Credit Agreement and the other Loan Documents (including fees contemplated in the Credit Agreement to the extent that payment has not been received by the Agent as at the date hereof) and may be charged by the Agent to any account of the Borrower maintained by the Lenders. The ABL DIP Fee will be fully earned by the Agent despite any failure by any Credit Party to comply with any other term of this Agreement.
- (c) Notwithstanding Section 2.3(d) hereof or any other provision of this Agreement, or any provision of the Credit Agreement or any other Loan Document:
 - (i) The Revolving Loans comprising each Canadian Prime Borrowing shall bear interest (computed on the basis of the actual number of days elapsed over a year of 365 days or 366 days, as the case may be) at a rate per annum equal to the Canadian Prime Rate plus 3.75%.
 - (ii) The Revolving Loans comprising each Base Rate Borrowing shall bear interest (computed on the basis of the actual number of days elapsed over a year of 360 days) at a rate per annum equal to the Base Rate plus 3.75%.
 - (iii) The BCAP Loan shall bear interest at a rate equal to 2% plus the rate otherwise applicable to the BCAP Loan.

- 3.4 **Revolving Commitments:** The Credit Parties, the Agent and the Lender hereby agree that the Revolving Commitment shall be reduced to \$55,000,000.

ARTICLE 4 OBLIGATIONS OF THE CREDIT PARTIES DURING FORBEARANCE PERIOD

4.1 Covenants of the Credit Parties

During the Forbearance Period, each Credit Party covenants and agrees as follows:

- (a) **Loan Document Obligations:** each Credit Party will strictly adhere to all the terms, conditions and covenants of this Agreement, the Credit Agreement and the other Loan Documents including, without limitation, terms requiring prompt payment to the Agent and the Lenders of principal and interest amounts when due, except to the extent that those terms, conditions and covenants are

otherwise specifically amended by this Agreement, or modified and agreed to in writing by the parties to such agreement and acknowledged and approved in writing by the Agent;

(b) **Asset Sales and Payments:** notwithstanding anything to the contrary contained in this Agreement, the Credit Agreement or any other Loan Document:

- (i) unless otherwise agreed to by the Agent in writing on or after the date hereof, the Credit Parties will not transfer, lease, sell or otherwise dispose of all or any part of their property, assets or undertaking (excluding dispositions of inventory in the ordinary course of business) other than the transfer, lease, sale or other disposition of property, assets or undertaking not exceeding \$25,000 for any single transaction or \$50,000 in the aggregate;
- (ii) notwithstanding Section 6.6 and 6.15 of the Credit Agreement, each Credit Party agrees that no Restricted Payment (including any Restricted Payment otherwise permitted by Section 6.6 of the Credit Agreement) or Capital Expenditure shall be incurred or paid, in each case unless such payment is expressly identified and included in the Approved Cash Flow or has been approved by the Agent in writing on or after the date hereof;
- (iii) unless otherwise agreed to by the Agent in writing on or after the date hereof, the Credit Parties shall not pay any key employee any bonus, incentive or retention payments, whether such payment was an obligation arising from a contract executed prior to the date of this Agreement or otherwise; and
- (iv) notwithstanding Section 6.8 of the Credit Agreement, no payment of interest, principal or any other obligations owing under the Shareholder Subordinated Indebtedness or the Elite Unsecured Debt shall be made during the Forbearance Period without the prior written consent of the Agent given on or after the date hereof.

(c) **Information Sharing:** The Credit Parties will forthwith provide to the Agent:

- (i) a copy of all reports and information respecting the business, financial condition or prospects of the Credit Parties within two business days following request by the Agent, or such other time period as agreed to by the Agent acting reasonably;
- (ii) the following reporting information certified by the respective Chief Financial Officer or Chief Executive Officer (unless otherwise specified) of the applicable Credit Party and in form and substance satisfactory to the Agent:
 - a. the reporting information required under the Credit Agreement (and, in particular, Section 5.1 thereof);
 - b. promptly after a Credit Party learns of the receipt or occurrence thereof, a certificate of such Credit Party, signed by a senior officer of such Credit Party specifying:
 - (i) notice of the institution of or any material adverse development in any action, suit or proceeding or any governmental investigation or any arbitration before any court or arbitrator or any Governmental Authority or official against such Credit Party which would reasonably be expected to have a Material Adverse Effect;
 - (ii) any official notice of any violation, possible violation, non-compliance or possible non-compliance, or claim made by any Governmental Authority or licensor pertaining to all or any part of the properties or Intellectual

Property Rights of such Credit Party which would reasonably be expected to have a Material Adverse Effect;

- (iii) except for the Existing Defaults, any event which constitutes a Default or Event of Default, together with a detailed statement specifying the nature thereof and the steps being taken to cure such Default or Event of Default;
 - (iv) the receipt of any notice from, or the taking of any other action by, the holder of any promissory note, debenture or other evidence of Indebtedness of such Credit Party with respect to an actual or alleged default, together with a detailed statement specifying the notice given or other action taken by such holder and the nature of the claimed default and what action such Credit Party is taking or proposes to take with respect thereto;
 - (v) the receipt of any notice from, or the taking of any other action by, a party to a Material Contract or material indebtedness with respect to an actual or alleged default, together with a detailed statement specifying the notice given or other action taken by such party and the nature of the claimed default and what action such Credit Party is taking or proposes to take with respect thereto;
 - (vi) the receipt of, or notice of the pending issuance of, any notice of garnishment against a Credit Party outlining the dollar amount subject to the garnishment and, if issued, attaching a copy of the order;
 - (vii) any returns, credit memos, damage or destruction of Inventory, in excess of \$250,000 in aggregate during the Forbearance Period, together with a detailed statement describing the Inventory returned, damaged or destroyed or the credit memo and the cause of such return, damage or destruction or credit memo and what action the Credit Parties are taking or propose to take with respect thereto;
 - (viii) any notices received from customers advising of termination of their purchase agreements, material reductions in orders relative to prior periods, or liabilities or set offs such customers are seeking to impose on any Credit Party in an aggregate amount in excess of \$250,000 during the Forbearance Period;
 - (ix) any other event, development or condition which may reasonably be expected to have a Material Adverse Effect;
- (iii) promptly:
- a. after receipt by a Credit Party, a copy of any notice received by such Credit Party in which any creditor, landlord, licensor or other third party delivers a notice of defect, default, demand, acceleration or enforcement in respect of any obligation of such Credit Party, and
 - b. any written restructuring, liquidation or sale proposal that is received by a Credit Party or their respective advisors;
- (iv) promptly, all other reports and information required to be provided under this Agreement, the Credit Agreement or any other Loan Document or as may be otherwise reasonably required by the Agent from time to time.

(d) **CCAA Proceedings:**

- (i) All motions, applications, affidavits, Court Orders and other pleadings and related documents filed or submitted to the CCAA Court by any Credit Party shall be consistent with the terms hereof and all Court Orders shall not be inconsistent with or have an adverse impact in any material respect on the rights, remedies or interests of the Agent or the Lenders unless otherwise agreed to by the Agent and the Lenders;
- (ii) Drafts of any motions, applications, affidavits, Court Orders and other pleadings and related documents to be filed or sought by any Credit Party, shall be provided to the Agent not less than three business days prior to service and filing, to be confirmed in advance to be satisfactory to the Agent and the Lenders, acting reasonably, subject to any amendments that are required by the Court that are acceptable to the Agent and the Lenders, acting reasonably;
- (iii) The Applicants agree to comply with the timeline set forth in Schedule 5 hereto with respect to negotiation of the Plan, with such amendments as may be agreed to by the Agent and the Lenders;
- (iv) The Applicants shall seek and obtain, as part of the Initial Order, an Order of the CCAA Court, in form and substance satisfactory to the Agent and the Lenders, authorizing and directing the Applicants to pay, in accordance with the Credit Agreement, as amended hereby, any and all amounts owing by the Applicants to the Agent and the Lenders on account of the Credit Parties' pre-filing outstanding Borrowings under the Credit Agreement from time to time, whether such Borrowings arose prior to or after the date of the Initial Order, provided that no advances of funds made by the Agent or the Lenders to the Credit Parties under the Credit Agreement (as amended) made on or after the granting of the Initial Order shall be used to pay pre-filing outstanding Borrowings under the Credit Agreement (as amended) (the "**Pre-filing Payments Order**");
- (v) The Credit Parties will enforce, collect and receive at their expense all amounts owing on their Accounts in the ordinary course of their business and any proceeds they receive shall be subject to the terms of the Credit Agreement and this Section 4.1(d);
- (vi) that, on the date of the Initial Order and at all times thereafter: (a) each of the Credit Parties' deposit accounts that receive proceeds of Inventory or other property subject to a Lien in favour of the Agent are and shall be Blocked Accounts subject to duly executed and delivered Blocked Account Agreements and complying in all respects with the terms set forth in the Credit Agreement, (b) each of the Credit Parties shall have delivered to the Agent evidence satisfactory to the Agent that blocked account and cash management systems with all such Persons complying in all respects with the terms set forth in the Credit Agreement have been established and are currently being maintained in the manner set forth in the Credit Agreement, and (c) it shall have delivered to the Agent copies of duly executed tri-party blocked account and other control agreements satisfactory to the Agent, acting reasonably, with all such other Persons as required by the Agent in its sole discretion; and
- (vii) The Applicants will seek and obtain, as part of the Initial Order, an Order of the CCAA Court, in form and substance satisfactory to the Agent and the Lenders, authorizing and directing the Applicants to enter into and perform under the above described Blocked Accounts arrangements (the "**Blocked Accounts Order**")

The Parties hereto hereby acknowledge, confirm and agree that the continuing implementation of the cash management arrangements is a contractual right provided to the Agent hereunder and under the Credit Agreement in order for the Agent to manage and monitor its collateral position and not a proceeding for enforcement or recovery of a

claim, or pursuant to, or an enforcement of, any security or remedies whatsoever, that the cash management arrangements contemplated herein are critical to the structure of the lending arrangements contemplated herein, that the Agent is relying on this acknowledgement, confirmation and agreement with respect to such cash management arrangements in making accommodations of credit available to the Borrower and in particular that any accommodations of credit are being provided by the Agent and the Lenders to the Borrower strictly on the basis of a borrowing base calculation to fully support and collateralize any such accommodations of credit hereunder.

- (viii) The Credit Parties will not disclaim any contract that is material to the Credit Parties' business except on prior notice to and with the written consent of the Agent;
- (e) **Security:** The Credit Parties will from time to time execute and deliver additional Guarantees and such supplements, amendments or additions as may be requested by the Agent to any of the existing Liens held by the Agent (together with supporting resolutions, certificates and other documentation as may be reasonably required) in order to better effect the intent of this Agreement, the Credit Agreement and the other Loan Documents.
- (f) **No Non-arm's Length Payments:** Without derogation to any negative covenants contained in the Credit Agreement, no Credit Party shall make any payments of interest, principal, bonuses, management fees, incentives, payments or salary or other distributions of cash or assets to any Person with which it does not deal with at arm's length except for (i) payments of salaries in the ordinary course of business and consistent with historical salaries; (ii) incentive payments to employees paid in accordance with the terms of the Credit Parties' teammate incentive program; and (iii) the payment of management fees and interest among the Credit Parties in the ordinary course of business consistent with past practice; in each case as identified and included in the Approved Cash Flow.
- (g) **Approved Cash Flow:** The Credit Parties agree that:
 - (i) the cash flow forecast attached hereto as Schedule 6 is the Approved Cash Flow for the period June 23, 2023 to September 23, 2023;
 - (ii) by 12:00 p.m. (Toronto time) on the third Business Day of each week, the Credit Parties shall provide the Agent with an updated Borrowing Base calculation and a variance report that shows the actual cash receipts and actual cash disbursements against the Approved Cash Flow on both a trailing weekly period basis and cumulative basis over the entirety of the Approved Cash Flow period to date, as well as an explanation of variances for individual line items in excess of the greater of 5% or \$100,000 from the Approved Cash Flow;
 - (iii) on each month anniversary of the date of this Agreement (or the first Business Day thereafter) the Credit Parties shall provide the Agent with a one-month roll-forward of the Approved Cash Flow, which shall reflect the Borrower's good faith projections and be in form and detail consistent with the initial Approved Cash Flow;
 - (iv) the Credit Parties shall deliver to the Agent promptly such additional information as the Agent may from time to time reasonably request respecting any such Approved Cash Flow; and
 - (v) the Credit Parties and the Monitor shall hold a weekly conference call with the Agent, at a time to be agreed by the Credit Parties, the Monitor and the Agent, to provide updates on the past and anticipated future performance of the business relative to the Approved Cash Flow.

For greater certainty, the requirement to deliver, and any approval of, an Approved Cash Flow having a duration extending beyond the current Termination Date does not constitute an agreement by the Lenders to extend the Termination Date.

The Credit Parties will not make any payments outside the ordinary course of their business.

On each second monthly anniversary date following the date of this Agreement (or the first Business Day thereafter) the Credit Parties shall deliver to the Agent an updated 13 week cash flow forecast that is proposed to be an updated Approved Cash Flow for the purposes of this Agreement (the "**Updated Cash Flow**"). Upon approval by the Agent of such Updated Cash Flow, such Updated Cash Flow shall be deemed the Approved Cash Flow for the applicable future forecasted periods under this Agreement.

- (h) **Real Property Mortgages:** the Credit Parties shall grant and shall cause the Agent to receive on or before the date that is 30 days following the date of this Agreement: (i) a perfected second priority Lien (subject only to the First Lien Term Loan Lender) on the Mortgaged Properties, including the filing and recording of mortgages, (ii) lender title insurance policies or commitments to title insure, in the customary form and with customary endorsements and qualifications for similar policies, insuring each Mortgaged Property, and (iii) the consent of the First Lien Term Loan Lender to the Agent's Liens over the Mortgaged Properties, in form and substance satisfactory to the Agent;
- (i) **Blocked Accounts:** Each Credit Party agrees as follows:
 - (i) that it will enforce, collect and receive at its expense all amounts owing on its Accounts in the ordinary course of its business and any proceeds it so receives shall be subject to the terms of the Credit Agreement and this Section 4.1(i);
 - (ii) that, on the date of this Agreement and at all times thereafter: (a) each of the Credit Parties' deposit accounts that receive proceeds of property subject to a Lien in favour of the Agent or otherwise are and shall be Blocked Accounts subject to duly executed and delivered Blocked Account Agreements and complying in all respects with the terms set forth in the Credit Agreement, (b) each of the Credit Parties shall have delivered to the Agent evidence satisfactory to the Agent that blocked account and cash management systems with all such Persons complying in all respects with the terms set forth in the Credit Agreement have been established and are currently being maintained in the manner set forth in the Credit Agreement, and (c) it shall have delivered to the Agent copies of duly executed tri-party blocked account and other control agreements satisfactory to the Agent, acting reasonably, with all such other Persons as required by the Agent in its sole discretion; and

The Parties hereto hereby acknowledge, confirm and agree that the continuing implementation of the cash management arrangements is a contractual right provided to the Agent hereunder and under the Credit Agreement in order for the Agent to manage and monitor its collateral position and not a proceeding for enforcement or recovery of a claim, or pursuant to, or an enforcement of, any security or remedies whatsoever, that the cash management arrangements contemplated herein are critical to the structure of the lending arrangements contemplated herein, that the Agent is relying on this acknowledgement, confirmation and agreement with respect to such cash management arrangements in making accommodations of credit available to the Borrower and in particular that any accommodations of credit are being provided by the Agent to the Borrower strictly on the basis of a borrowing base calculation to fully support and collateralize any such accommodations of credit hereunder.

- (j) **Rent Payments:** Subject to any pre-filing amounts that are subject to a stay of proceedings in favour of the Applicants, the Credit Parties must maintain as current all payments under any lease or any mortgage of any premises out of which any Credit Party operates, or contracts for storage or bailment, and will otherwise not permit any default or event of default under any such lease,

mortgage or contract for storage or bailment, or forthwith obtain a waiver in writing from the relevant landlord, storer or bailee.

- (k) **Minimum Excess Availability:** The Borrower shall maintain Excess Availability of not less than \$1,500,000 at all times during the Forbearance Period, which shall be calculated after applying the Availability Block of \$2,500,000.
- (l) **Further Assurances:** Each Credit Party will provide any further or additional documents, whether provided for in this Agreement, the Credit Agreement, any other Loan Documents or otherwise, that the Agent may require to ensure that the Agent has and continues to have full and complete Guarantees from each Credit Party and a first ranking Lien, subject to Permitted Liens, against such assets, properties and undertaking of the Credit Parties as the Agent requires (including all amendments or supplements to any of this Agreement, the Credit Agreement or any other Loan Document (including all Security Documents) and all additional or supplemental debentures, hypothecs, mortgages, charges, assignments, pledges and/or other security deemed necessary or desirable by the Agent).

4.2 Covenants in the Credit Agreement and the other Loan Documents

Except as expressly modified in this Agreement by specific reference, all of the covenants in this Agreement are in addition to and not in substitution for the covenants of the Credit Parties in the Credit Agreement and the other Loan Documents.

ARTICLE 5 AMENDMENTS TO LENDING ARRANGEMENTS

5.1 Amendments to Credit Agreement

- (a) The Borrower agrees to provide the Agent with information detailing the proposed use of proceeds for Borrowings after the date of this Agreement, which information shall accompany each Borrowing Request and be in form satisfactory to Agent.
- (b) Except to the extent otherwise set forth in this Agreement, the credit facilities shall continue in accordance with their terms and conditions as set forth in the Credit Agreement.

5.2 Purpose

- (a) The proceeds of Borrowings by the Borrower shall, subject to the provisions of this Agreement, be used to fund the operations of the Applicants in the ordinary course and for such other purposes as may be agreed to by the Agent in writing; all in accordance with the Approved Cash Flow.

5.3 Termination Date

- (a) All amounts owing to the Agent and the Lenders by the Borrower in connection with the Credit Agreement and otherwise in connection with this Agreement and all other Loan Documents shall be paid by the Credit Parties to the Agent in full on the Termination Date. The “**Termination Date**” shall be the date which is the earliest of:
 - (i) notice by the Agent to the Borrower of a Default or an Event of Default (other than an Existing Default);
 - (ii) December 18, 2023, or such other date as may be agreed to by the Agent; and
 - (iii) the occurrence or existence of any Terminating Event.

5.4 Terminating Events

Other than as provided in this Agreement or as may otherwise be consented to in writing by the Agent, the occurrence of any of the following events will constitute a **"Terminating Event"** under this Agreement (and, for purposes of greater certainty, a Default or an Event of Default under the Credit Agreement and the other Loan Documents):

- (a) if any Additional Default occurs;
- (b) if the Initial Order is not obtained in form and substance acceptable to the Agent on or prior to June 22, 2023, and amended and restated in form and substance acceptable to the Agent on or prior to June 30, 2023;
- (c) if any of the Credit Parties fail to comply with any Order granted by the CCAA Court;
- (d) if any Credit Party fails to achieve any of the steps set out in Schedule 5 by the dates set out therein;
- (e) if any cash flow projection provided to the Agent pursuant to Section 4.1(g) is not acceptable to the Agent, acting reasonably;
- (f) if, in any given week during the Forbearance Period: (i) the actual cumulative Receipts (as so described in the Approved Cash Flow) are more than 5% below the forecasted cumulative Receipts amount (as shown on the Approved Cash Flow) for the given week, or (ii) the actual weekly Receipts are more than 15% below forecasted weekly Receipts amount (as shown in the Approved Cash Flow) for a given week;
- (g) if (a) a Credit Party creates, incurs, assumes or permits to exist any Lien on any of its property, undertaking or assets now owned or hereafter acquired, or (b) the CCAA Court makes any order declaring that all or part of a Credit Party's property is subject to a Lien in favour of any party other than the Agent and such court ordered charge purports to rank in any manner whatsoever in priority to or *pari passu* with any claim of the Agent under its Liens in the Security Documents (including liens securing the obligations in connection with the BCAP Loan) or the ABL DIP Priority Charge, other than (i) Permitted Liens and (ii) any court-ordered charge(s) approved by the Agent and granted by the CCAA Court in the CCAA Proceedings; or (iii) in each case solely in respect of the Mortgaged Properties, the Liens granted to the First Lien Term Loan Lender on the Mortgaged Properties.
- (h) if BDC provides notice of any dispute regarding the legality, validity, binding nature, enforcement or enforceability of its participation under the BDC BCAP Program in connection with Borrower;
- (i) the value of Eligible Inventory (valued in Canadian Dollars at Standard Cost) at any time exceeds \$75,000,000 in the week ended June 24, 2023, or \$60,000,000 thereafter;
- (j) if, on or after the date of this Agreement:
 - (i) the CCAA Proceedings are terminated without the prior or concurrent consent of the Agent,
 - (ii) any Order of the CCAA Court is sought by a Credit Party or granted by the CCAA Court that is not in form and substance acceptable to the Agent and the Lenders acting reasonably,
 - (iii) the Monitor reports to the CCAA Court that there has been a material adverse change in respect of an Applicant and/or the CCAA Proceedings;

- (k) if any representation, warranty or other statement made or deemed to be made by a Credit Party in this Agreement, the Credit Agreement or any of the other Loan Documents or in any of the documents or instruments to be delivered to the Agent and the Lenders as contemplated by this Agreement is untrue in any material respect;
- (l) if any Credit Party shall fail to observe or perform any covenant, condition or agreement contained in this Agreement;
- (m) if any notice of garnishment is received by any Credit Party from any Governmental Authority;
- (n) the occurrence of any event listed in Section 4.1(c)(ii)(b);
- (o) if any representation, warranty or other statement made or deemed to be made by any Credit Party in this Agreement, the Credit Agreement or any of the other Loan Documents or in any of the documents or instruments to be delivered to the Agent and the Lenders as contemplated by this Agreement is untrue in any material respect or, in the case of any representation stated to be made as at a particular earlier date, was untrue in any material respect when made;
- (p) if there occurs any: (a) closure of all or any material part of any of the business or operations of any of the Credit Parties or any suspension of all or a material part of the business or operations of any of the Credit Parties and/or (b) disposition or sale of all or any material part of the business or operations of the Credit Parties;
- (q) if any action, claim or proceeding is formally commenced, filed or lodged against any of the Credit Parties which is not stayed by the CCAA Proceedings and the same gives rise to, or could reasonably be expected to give rise to, indebtedness, liabilities or obligations of \$2,500,000 and such action, claim or proceeding continues undismissed or unstayed for a period of 10 calendar days after the institution thereof;
- (r) if any creditor or encumbrancer of any Credit Party takes possession of any of the Credit Parties' property or assets, or if distress or execution, foreclosure or power of sale, or any similar process is levied or enforced against such property or assets;
- (s) if any of the Credit Parties contests or denies in any manner the legality, validity, binding nature or enforceability of this Agreement, the Credit Agreement or any of the other Loan Documents or any liabilities and obligations to the Agent or the Lenders under or relating to this Agreement, the Credit Agreement or any of the other Loan Documents;
- (t) if the Agent determines that a Material Adverse Change in the financial or business condition, or prospects of, any Credit Party has occurred or that a Material Adverse Change in the value of the Collateral relative to the Obligations has occurred;
- (u) if any Order is granted in the CCAA Proceedings that is not in form and substance acceptable to the Agent, acting reasonably;
- (v) if the stay imposed under the CCAA Proceedings is lifted, in whole or in part, is terminated or lapses without extension, unless the Agent consents thereto;
- (w) if any step is taken or event occurs that would materially prejudice or jeopardize the Agent's or the Lenders' rights under this Agreement, the Credit Agreement, or the other Loan Documents or the Collateral secured by the Loan Documents; or
- (x) if, other than the CCAA Proceedings, any action is taken by or against or consented to by a Credit Party to institute proceedings to be liquidated, adjudicated a bankrupt or insolvent or consent to the institution of liquidation, bankruptcy, insolvency or similar proceedings against a Credit Party or file

a petition (or similar action or proceeding) or consent seeking reorganization, arrangement, or relief from creditors, or take or commence any other steps or proceedings under any one or more of the applicable insolvency, liquidation, bankruptcy or analogous statutes or laws unless, in the case of any action taken against a Credit Party in connection with any of the foregoing, such petition, application or proceeding is contested by the Credit Parties and is dismissed or stayed within 5 Business Days after the institution thereof (and in the case of a stay, such stay is continuing).

Upon the occurrence of a Terminating Event, the Forbearance Period will automatically terminate without requirement for any notice to any Credit Party or any other action whatsoever by the Agent and the Agent and the Lenders shall be entitled to exercise any and all rights and remedies under the Credit Agreement and the other Loan Documents without further notice to the Credit Parties and any such notice, including pursuant to the BIA, is hereby irrevocably waived by the Credit Parties.

ARTICLE 6 REPRESENTATIONS AND WARRANTIES

Each of the Credit Parties represents, warrants and covenants with and to the Agent and the Lenders as follows:

6.1 Representations in Loan Documents

Except for any representation and warranty set out in any of the Loan Documents relating to the non-existence of an Existing Default, or stated to be made as at a particular date, each of the representations and warranties made by or on behalf of the Credit Parties to the Agent in the Credit Agreement or any of the other Loan Documents was true and correct when made, and in all material respects is, true and correct on the date of this Agreement, with the same full force and effect as if each of those representations and warranties had been made by the applicable Credit Parties on the date of, and within, this Agreement.

6.2 Full Effect of Documents

This Agreement, the Credit Agreement and the other Loan Documents are in full force and effect, except as modified by this Agreement.

6.3 No Conflict

The execution and delivery and performance of this Agreement by each Credit Party will not violate any requirement of Applicable Law or any Material Contract of each Credit Party, and will not result in, or require, the creation or imposition of any Lien on any of its properties or revenues except as expressly contemplated herein.

6.4 Lender May Pursue Rights and Remedies

Nothing in this Agreement will prejudice the Agent's and the Lenders' rights to pursue any of their rights or remedies including, without limitation, enforcing their rights under any of this Agreement, the Credit Agreement or any of the other Loan Documents or under Applicable Law following the expiry or termination of the Forbearance Period.

ARTICLE 7 CONDITIONS PRECEDENT TO THIS AGREEMENT

7.1 Conditions Precedent

(a) The forbearance and other accommodations contemplated hereunder shall only be granted by the Agent if the following conditions precedent (the "**Conditions Precedent**") have been satisfied or

complied with in a manner satisfactory to the Agent on or before 5:00 p.m. (Calgary Time) on June 22, 2023 or such other time or date as specified below:

- (i) the Agent has received a duly authorized, executed and delivered PDF copy of this Agreement executed by each of the Credit Parties;
- (ii) the payment of all fees, disbursements and taxes owing to the Agent's and the Lenders' legal counsel and to PricewaterhouseCoopers Inc. (as advisor to the Agent and the Lenders) at such time pursuant to a delivered invoice; it being acknowledged and agreed by the Credit Parties that, in satisfying this condition precedent, each such amount payable under (y) shall be automatically debited by the Agent from the operating accounts of the Borrower without any further consent or agreement of the Credit Parties being required in respect thereof;
- (iii) the Agent shall have confirmed to the Credit Parties that the Approved Cash Flow prepared by the Borrower to be filed with its CCAA materials is satisfactory to the Agent;
- (iv) the Agent shall have received, drafts of the Initial Order and drafts of all supporting affidavits and reports to be filed in the CCAA Proceedings and the Approved Cash Flow and such materials shall be in form and substance satisfactory to the Agent and the Lenders, acting reasonably
- (v) the Initial Order shall have been granted in form and substance satisfactory to the Agent and the Lenders and shall, *inter alia*,:
 - a. provide that the Agent shall at all times be treated as an "unaffected creditor" in the CCAA Proceedings and in any Plan filed pursuant thereto and/or in any other insolvency, restructuring, reorganization and/or arrangement proceeding with respect to any Applicant thereafter including, without limitation, proceedings under the CCAA or the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**") and any stay of proceedings ordered by the CCAA Court in the CCAA Proceedings shall not apply to the Agent and the Lenders;
 - b. provide that the aggregate of any Borrowings under the Credit Agreement (as amended by this Agreement) made on or after the time of the granting of the Initial Order shall be secured by a CCAA Court ordered security and charge in favour of the Agent (the "**ABL DIP Priority Charge**") which security and charge shall rank in priority to every other claim, Lien and security interest against the Credit Parties' property, assets and undertaking, other than the Administration Charge (as defined in the Initial Order) and the First Lien Term Loan Lender's mortgage on the Mortgaged Properties, which may have priority over the ABL DIP Priority Charge and the Agent's Liens, without any need or requirement for any further steps for attachment, perfection, opposability against third parties, registration, publication or other notice thereof required to be taken by the Agent;
 - c. provide that except as may be expressly consented to by the Agent, at no time on or after the date of the Initial Order shall all or part of an Applicant's property be the subject of a court ordered security or charge in favour of any party where such security or charge is purported to rank in any manner whatsoever in priority to or *pari passu* with any claim of the Agent or the Lenders in respect of the Liens under the Security Documents (including liens securing obligations in connection with the BCAP Loan), other than the Administration Charge (to a maximum of \$750,000); the ABL DIP Priority Charge; and a directors and officers charge (to a maximum of \$4,000,000) which shall rank subordinate to the ABL DIP Priority Charge but in priority to the Agent's and the Lenders' Liens under the other Security Documents;

- d. include the Pre-filing Payments Order; and
- e. include the Blocked Accounts Order.
- (vi) the Agent shall have received satisfactory evidence that the First Lien Term Loan Lender has agreed to waive any default or event of default of the Credit Parties existing thereunder arising from the CCAA Proceedings or otherwise, which waiver shall be in addition to the stays of proceedings in the Initial Order;
- (vii) the Agent shall have received all other documentation reasonably required by the Agent and its counsel in connection with this Agreement (including, without limitation, such further assurances, resolutions, opinions and additional confirmations or other agreements relating to the Agent's Liens), all duly authorized, executed and delivered in form and substance satisfactory to the Agent in its sole discretion;
- (viii) other than the Existing Defaults, no event shall have occurred and be continuing, or will result from the consummation of the transactions contemplated by this Agreement that would constitute a Default or an Event of Default; and
- (ix) as of the date set out above in this Section 7.1, Excess Availability shall be not less than \$1,500,000, which shall be calculated after applying the Availability Block of \$2,500,000.

The Conditions Precedent are for the sole benefit of the Agent and the Lenders and may be waived only by the Agent in writing. If the Conditions Precedent are not complied with to the satisfaction of the Agent as provided for above, and the Agent will not waive satisfaction thereof at its sole discretion, then the Agent shall have no obligation to grant the forbearance and other accommodations contemplated herein.

ARTICLE 8 GENERAL

8.1 Effect of this Agreement

Except as modified by this Agreement, no other changes or modifications to the Credit Agreement or the other Loan Documents are intended or implied, and in all other respects the Credit Agreement and the other Loan Documents are specifically acknowledged, ratified and confirmed by the Credit Parties. To the extent of conflict between the terms of this Agreement, the Credit Agreement and the other Loan Documents, the terms of this Agreement will govern.

8.2 Costs and Expenses

The Credit Parties hereby absolutely and unconditionally jointly and severally agree to pay to and fully indemnify the Agent, on demand by the Agent at any time and as often as may be required, whether or not all or any of the transactions contemplated by this Agreement are consummated, all fees and disbursements of the Agent, all counsel to the Agent, any financial advisor retained by the Agent, all other consultants to and agents of the Agent and all other expenses incurred by the Agent in connection with this Agreement, the Credit Agreement and the other Loan Documents including without limitation: (a) legal expenses in connection with the preparation, negotiation and interpretation of this Agreement, the other agreements or documents contemplated by this Agreement, the Credit Agreement and the other Loan Documents and the administration of this Agreement, the Credit Agreement and the other Loan Documents generally; (b) all documented expenses of advisors and consultants to and agents of the Agent (including legal expenses on a full indemnity basis) incurred in connection with the protection and enforcement of this Agreement, the Credit Agreement or any of the other Loan Documents or in connection with any proceeding in respect of bankruptcy, insolvency, winding up, receivership, dissolution, reorganization, liquidation, moratorium, arrangement or assignment for the benefit of creditors involving any Credit Party; in each of the foregoing events whether under the laws of Canada, Ontario, Alberta or other applicable jurisdiction, or

any local or foreign bankruptcy, insolvency, reorganization, receivership or similar law. Each Credit Party specifically authorizes the Agent to debit from any of its accounts with the Agent the amount of any such existing and future fees and disbursements, and other expenses and the Agent agrees to use commercially reasonable efforts to notify such Credit Party of such anticipated debit and the amount thereof at least two (2) Business Days in advance.

8.3 Release

- (a) In consideration of this Agreement and for other good and valuable consideration, each Credit Party, on their own behalf and on behalf of their respective successors, assigns, and other legal representatives, absolutely, unconditionally and irrevocably releases the Agent, the Lenders, and their present and former affiliates, subsidiaries, divisions, predecessors, directors, officers, legal counsel, consultants, employees, agents and other representatives, and their successors and assigns (all of which are referred to collectively as the “**Releasees**” and individually as a “**Releasee**”), of and from all demands, actions, causes of action, suits, covenants, contracts, controversies, agreements, promises, sums of money, accounts, bills, reckonings, damages and any and all other claims, counterclaims, defences, rights of set-off, demands and liabilities (individually, a “**Claim**” and collectively, “**Claims**”) known or unknown, both at law or in equity, that such Credit Party or any of their respective successors, assigns, or other legal representatives may now or later have or claim against any of the Releasees by reason of any circumstance, action, cause or thing which arises at any time on or prior to the date of this Agreement, including for or on account of, or in relation to, or in any way in connection with (i) this Agreement, the Credit Agreement or any of the other Loan Documents or any transactions under or related to, this Agreement, the Credit Agreement or any of the other Loan Documents, and (ii) any and all proposed refinancings of any Credit Party by the Lenders (past or present), including, without limitation, any and all prior proposed offers of finance (whether consummated or not), term sheets, indicative and non-binding term sheets or negotiations for financing, between any of the Lenders and any Credit Party;
- (b) each Credit Party understands, acknowledges and agrees that the release set out in Section 8.3(a) may be pleaded as a full and complete defence and may be used as a basis for an injunction against any action, suit or other proceeding which may be instituted, prosecuted or attempted in breach of the provisions of that release; and
- (c) each Credit Party agrees that no fact, event, circumstance, evidence or transaction which could now be asserted or which may later be discovered will affect in any manner the final, absolute and unconditional nature of the release set out in Section 8.3(a).

8.4 Survival of Representations and Warranties

All representations and warranties made in this Agreement or any other document delivered in connection with this Agreement will survive the execution and delivery of this Agreement and the other documents and no investigation by the Agent or any closing will affect the representations and warranties or the right of the Agent to rely upon them.

8.5 Governing Law

This Agreement is governed by, and is to be construed and interpreted in accordance with, the laws of the Province of Alberta and the federal laws of Canada effective therein.

8.6 Reviewed by Legal Counsel

Each Credit Party represents and warrants to the Agent and the Lenders that it:

- (a) understands fully the terms of this Agreement and the consequences of the execution and delivery of this Agreement;
- (b) has been afforded an opportunity to have this Agreement reviewed by, and to discuss this Agreement and any documents executed in connection herewith with, such lawyers and other persons as such Credit Party may wish; and
- (c) has entered into this Agreement and executed and delivered all documents in connection herewith of its own free will and accord and without threat, duress or other coercion of any kind by any Person.

The Parties hereto acknowledge and agree that neither this Agreement nor the other documents or instruments executed pursuant hereto will be construed more favourably in favour of one than the other based upon which Party drafted the same, it being acknowledged that all Parties hereto contributed substantially to the negotiation and preparation of this Agreement and the other documents and instruments executed pursuant hereto or in connection herewith.

8.7 Submission to Jurisdiction

Without prejudice to the ability of any Party to enforce this Agreement in any other proper jurisdiction, each of the Parties irrevocably submits and attorns to the non-exclusive jurisdiction of the courts of Alberta to determine all issues, whether at law or in equity arising from this Agreement. To the extent permitted by Applicable Law, each of the Parties irrevocably waives any objection (including any claim of inconvenient forum) to the venue of any legal proceeding arising out of or relating to this Agreement in the courts of that province, or that the subject matter of this Agreement may not be enforced in those courts, and irrevocably agrees not to seek, and hereby waives any right to, judicial review by any court which may be called upon to enforce the judgment of the courts referred to in this Section 8.7, of the substantive merits of any such suit, action or proceeding. To the extent a Party has or hereafter may acquire any immunity from the jurisdiction of any court or from any legal process (whether through service or notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise) with respect to itself or its property, that Party irrevocably waives that immunity in respect of its obligations under this Agreement.

8.8 Mutual Waiver of Jury Trial

Because disputes arising in connection with complex financial transactions are most quickly and economically resolved by an experienced and expert person and the Parties wish applicable provincial and federal laws to apply (rather than arbitration rules), the Parties desire that their disputes be resolved by a judge applying those Applicable Laws. Therefore, to achieve the best combination of the benefits of the judicial system, the Parties waive all rights to trial by jury in any action, suit, or proceeding brought to resolve any dispute, whether arising in contract, tort, or otherwise between the Agent and any Credit Party, arising out of, connected with, or related or incidental to, the relationship established between them in connection with this Agreement, the Credit Agreement or any of the other Loan Documents or the transactions related to this Agreement, the Credit Agreement or any of the other Loan Documents.

8.9 Time of Essence

Time is of the essence in all respects of this Agreement.

8.10 Notices

Any Communication or notice must be in writing and delivered in accordance with the Credit Agreement.

8.11 Further Assurances

Each Credit Party will, at its own cost, execute and deliver all further agreements and documents and provide all further assurances as may be reasonably required by the Agent to give effect to this Agreement and, without limiting the generality of the foregoing, will do or cause to be done all acts and things, execute and deliver or cause to be executed and delivered all agreements and documents and provide such assurances, undertakings and information as may be required from time to time by all regulatory or governmental bodies or stock exchanges having jurisdiction over the affairs of a Party or as may be required from time to time under applicable securities legislation.

8.12 Confirmation of Documents and Terms

Each of the Credit Parties hereby agrees to the terms of this Agreement and confirms to and agrees with the Agent and the Lenders that its liabilities and obligations, and the Liens created under or pursuant to all Security Documents, Loan Documents and other documents and instruments executed in connection with the Credit Agreement and accommodations provided for or contemplated in the Credit Agreement continue in full force and effect in accordance with their respective terms and that all Security Documents and other Loan Documents executed by it secure and shall continue to secure the Obligations.

8.13 No Merger or Novation

All Security Documents, other Loan Documents and other documents and instruments provided to the Agent or otherwise entered into by the Credit Parties prior to the date hereof in connection with the Credit Agreement and accommodations provided for or contemplated in the Credit Agreement, there being no novation or merger of the Credit Agreement (as amended pursuant to this Agreement), any of the Agent's Liens under the Security Documents or any of the other Loan Documents, and all Obligations continue under the Credit Agreement (as amended by this Agreement) and the other Loan Documents.

8.14 Amendment and Waiver

No supplement, modification, amendment, waiver, discharge or termination of this Agreement is binding unless it is executed in writing by the Party to be bound. No waiver of, failure to exercise or delay in exercising, any provision of this Agreement constitutes a waiver of any other provision (whether or not similar) nor does such waiver constitute a continuing waiver unless otherwise expressly provided.

8.15 Assignment and Enurement

No Credit Party will be entitled to assign this Agreement or any right or obligation under this Agreement without the prior consent of the Agent. The Agent may assign this Agreement and any of their rights and obligations under this Agreement without the consent of or notice to any Credit Party. This Agreement enures to the benefit of and is binding upon the Parties and their respective successors and permitted assigns.

8.16 Severability

Each provision of this Agreement is distinct and severable. If any provision of this Agreement, in whole or in part, is or becomes illegal, invalid or unenforceable in any jurisdiction by a court of competent jurisdiction, the illegality, invalidity or unenforceability of that provision will not affect:

- (a) the legality, validity or enforceability of the remaining provisions of this Agreement; or
- (b) the legality, validity or enforceability of that provision in any other jurisdiction.

8.17 Counterparts

This Agreement may be executed and delivered by the Parties in one or more counterparts, each of which when so executed and delivered will be an original and such counterparts will together constitute one and the same instrument.

8.18 Electronic Signatures

Delivery of this Agreement by facsimile or other electronic transmission (including through "pdf" format via email) constitutes valid and effective delivery.

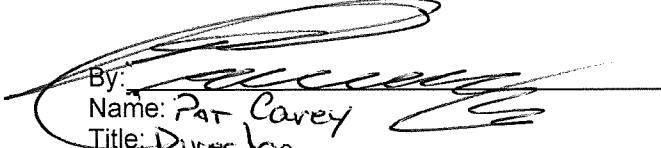
8.19 Paramountcy

In the event of any conflict or inconsistency between the provisions of this Agreement and the provisions of the Credit Agreement or any other Loan Document, the provisions of this Agreement shall prevail.

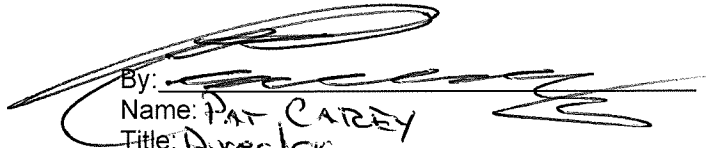
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Each of the Parties has executed and delivered this Agreement effective as of the date first written above.

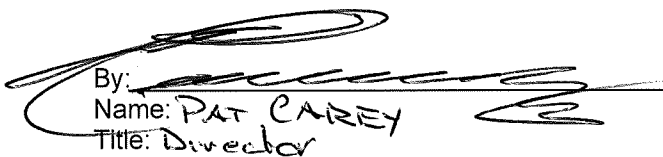
CAREY MANAGEMENT INC.,
as the Borrower

By: 
Name: PAT CAREY
Title: Director

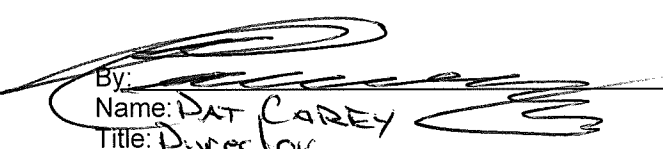
WALLACE & CAREY INC.,
as a Guarantor

By: 
Name: PAT CAREY
Title: Director

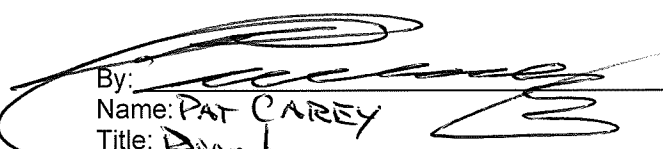
LOUDON BROS. LIMITED,
as a Guarantor

By: 
Name: PAT CAREY
Title: Director

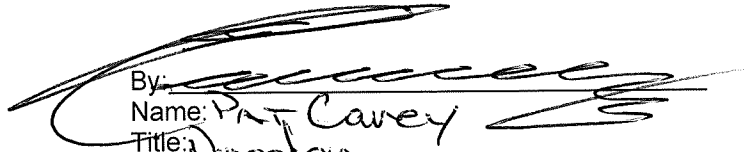
SPRUCE IT UP LAND CORP.,
as a Guarantor

By: 
Name: PAT CAREY
Title: Director

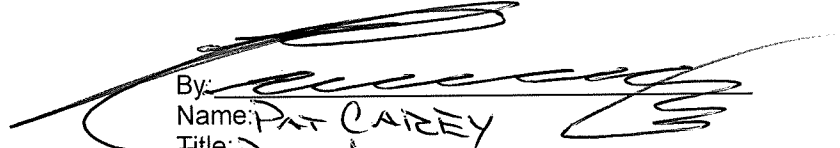
772921 ALBERTA INC.,
as a Guarantor

By: 
Name: PAT CAREY
Title: Director

RIDGE MEADOWS PROPERTIES LTD.,
as a Guarantor

By: 
Name: Pat Carey
Title: Director

RETLOGISTICS INC.,
as a Guarantor

By: 
Name: Pat CAREY
Title: Director

CANADIAN IMPERIAL BANK OF COMMERCE, as
Agent and as Lender

Per



Name: Anthony Tsuen
Title: Authorized Signatory

Per



Name: Steven Filippi
Title: Authorized Signatory

SCHEDULE 1
EXISTING INDEBTEDNESS UNDER THE CREDIT AGREEMENT

- CAD Revolving Loan Balance: C\$41,823,454.43
- USD Revolving Loan Balance: US\$404.75
- CAD Standby Letters Of Credit: C\$857,500.00
- CAD BCAP Loan: C\$4,861,111.12

**SCHEDULE 2
EXISTING SECURITY**

1. General Security Agreement dated as of September 26, 2017 among Carey Management Inc., Wallace & Carey Inc., Loudon Bros. Limited, Muirfield Lakes Golf Club Ltd., Elite Foods Inc., Elite International Foods Inc., Rical Sales and Logistics Inc., Regneck Enterprises Ltd., Retlogistics Inc., Ridge Meadows Properties Ltd., 1204248 Alberta Inc. and 772921 Alberta Inc., collectively as Grantors, and Canadian Imperial Bank of Commerce, as Agent.
2. Guarantee Agreement entered into as of September 26, 2017 by and among Wallace & Carey Inc., Loudon Bros. Limited, Muirfield Lakes Golf Club Ltd., Elite Foods Inc., Elite International Foods Inc., Rical Sales and Logistics Inc., Regneck Enterprises Ltd., Retlogistics Inc., Ridge Meadows Properties Ltd., 1204248 Alberta Inc. and 772921 Alberta Inc., as Guarantors, in favour of Canadian Imperial Bank of Commerce, as Agent.
3. Notice of Intention to Give Security Under Section 427 of the Bank Act (Canada) to Canadian Imperial Bank of Commerce, dated September 7, 2017, from Carey Management Inc.
4. Application for Credit and Promise to Give Bills of Lading, Warehouse Receipts or Security Under Section 427 of the Bank Act (Canada), dated September 26, 2017, from Carey Management Inc. to Canadian Imperial Bank of Commerce.
5. Agreement As To Powers of Canadian Imperial Bank of Commerce In Relation To Security Under Section 427 of the Bank Act (Canada), dated September 26, 2017, from Carey Management Inc. to Canadian Imperial Bank of Commerce.
6. Special Security In Respect of Specified Property or Classes of Property Described in Section 427 of the Bank Act (Canada), dated September 26, 2017, from Carey Management Inc. to Canadian Imperial Bank of Commerce.
7. Securities Pledge Agreement between Carey Management Inc. and Canadian Imperial Bank of Commerce, dated September 26, 2017, with respect to the securities listed thereto in Schedule A.
8. Securities Pledge Agreement between Wallace & Carey Inc. and Canadian Imperial Bank of Commerce, dated September 26, 2017, with respect to the securities listed thereto in Schedule A.
9. Securities Pledge Agreement between Elite Foods Inc. and Canadian Imperial Bank of Commerce, dated September 26, 2017, with respect to the securities listed thereto in Schedule A.
10. Blocked Accounts Agreement dated September 26, 2017, between Carey Management Inc., 1204248 Alberta Inc., Elite Foods Inc., Elite International Foods Inc., Loudon Bros. Limited, Muirfield Lakes Golf Club Ltd., Regneck Enterprises Ltd., RETLogistics Inc., Rical Sales and Logistics Inc., Ridge Meadows Properties Ltd. and Wallace & Carey Inc., collectively as Customers, Canadian Imperial Bank of Commerce, as account bank, and Canadian Imperial Bank of Commerce, as Agent for the lenders.
11. Assumption and Confirmation of Security dated October 29, 2017 between Elite Foods International Inc., as amalco, and Canadian Imperial Bank of Commerce, as Agent.
12. Confirmation of Security agreement executed on June 1, 2020 between Spruce It Up Land Corp., as amalco, and Canadian Imperial Bank of Commerce, as Agent.

**SCHEDULE 3
EXISTING DEFAULTS**

1. under Section 7.1(d) of the Credit Agreement resulting from the failure of the Borrower to maintain during the Minimum EBITDA Period for the Fiscal Months of April 2022 through to and including October 2022 the minimum EBITDA required under Section 5.13 of the Credit Agreement.
2. a failure to deliver an annual budget of the Borrower and other Credit Parties, on a consolidated basis, approved by the Board of Directors of the Borrower, for the Fiscal Year commencing November 1, 2022 in accordance with the terms of and within the time required by Section 5.1(q) of the Credit Agreement.
3. a failure to deliver the Borrower's and its Subsidiaries' audited combined balance sheet and related statements of income, retained earnings and changes in financial position for the end of and for the Fiscal Year ended October 31, 2022 in accordance with the terms of and within the time required by Section 5.1(a) of the Credit Agreement.
4. a failure to deliver the Borrower's and its Subsidiaries' unaudited combined balance sheet and related statements of income, retained earnings and changes in financial position as of the fiscal periods ending July 9, 2022, August 6, 2022, September 3, 2022, October 1, 2022, October 28, 2022, November 26, 2022, December 24, 2022, January 21, 2023, February 18, 2023, March 18, 2023, April 15, 2023 and May 13, 2023 in accordance with the terms of and within the time required by Section 5.1(b) of the Credit Agreement.
5. a failure to maintain a Fixed Charge Coverage Ratio at the level required pursuant to Section 5.12 of the Credit Agreement from and after May 6, 2022.
6. an Event of Default under Section 7.1(r) of the Credit Agreement as a result of the occurrence of an event or condition that enables or permits the holder or holders of the Indebtedness under the First Lien Term Loan Facility, or any trustee or agent on their behalf, to cause such Indebtedness to become due. Specifically, the Credit Parties have failed to maintain the Fixed Charge Coverage Ratio required under the First Lien Term Loan Facility for the year ended October 31, 2022.

**SCHEDULE 4
MORTGAGED PROPERTIES**

1. PLAN 7911396
BLOCK 1
LOT 3
EXCEPTING THEREOUT ALL MINES AND MINERALS
AREA: 1.06 HECTARES (2.62 ACRES) MORE OR LESS
Standing in the name of 772921 Alberta Inc.
2. PLAN 7911396
BLOCK 1
LOT 4
EXCEPTING THEREOUT ALL MINES AND MINERALS
AREA: 0.502 HECTARES (1.24 ACRES) MORE OR LESS
Standing in the name of 772921 Alberta Inc.
3. PLAN 8031JK
BLOCK A
LOT 5
EXCEPTING THEREOUT ALL MINES AND MINERALS
AREA: 7.85 HECTARES (19.4 ACRES) MORE OR LESS
Standing in the name of Ridge Meadows Properties Ltd.
4. PLAN 5235JK
BLOCK A
EXCEPTING THEREOUT ALL MINES AND MINERALS
AREA: 8.4 HECTARES (20.75 ACRES) MORE OR LESS
Standing in the name of Spruce It Up Land Corp.
5. PIN: 003-862-682
LOT C DISTRICT LOT 506 OSOYOOS DIVISION YALE DISTRICT PLAN 30698
Standing in the name of 772921 Alberta Ltd.

**SCHEDULE 5
RESTRUCTURING TIMELINE**

Date	Milestone
Within 40 days following the date of the hearing of the application for the Initial Order	The Applicants shall deliver to the Agent a term sheet summarizing the material commercial terms of the proposed Plan for which support will be solicited from the unsecured creditors of Wallace & Carey Inc. and Loudon Bros Limited, which term sheet shall be in form and substance acceptable to the Agent (the " Plan Term Sheet ").
Within 40 days following the date of the hearing of the application for the Initial Order	The Applicants shall deliver a pro forma business model and financial forecast for the restructured business of the Applicants following implementation of the proposed Plan consistent with the Plan Term Sheet, which shall be in form and substance acceptable to the Agent.
Within 60 days following the date of the hearing of the application for the Initial Order	The Applicants shall provide confirmation in form and substance acceptable to the Agent that the required majorities of creditors of the Applicants support and will vote in favour of the Plan on the terms set out in the Plan Term Sheet.
Within 90 days following the date of the hearing of application for the Initial Order	The Applicants shall submit a motion to the CCAA Court filing the Plan and seeking a Plan Filing and Meeting Order and a Claims Procedure Order, in each case acceptable to the Agent.
Within 120 days following the date of the hearing of the application for the Initial Order	The Plan shall have been voted upon and approved by the requisite majorities of creditors as required pursuant to the CCAA.
November 30, 2023	Implementation of the Plan.

**SCHEDULE 6
APPROVED CASH FLOW**

SEE ATTACHED

Wallace & Carey Inc., Loudon Bros Limited and Carey Management Inc.
Projected Weekly Cash Flow Statement (Consolidated)
 June 18, 2023 to September 30, 2023
 (Unaudited; \$CAD Thousands)

Note	Week ending																Total
	24-Jun-23	01-Jul-23	08-Jul-23	15-Jul-23	22-Jul-23	29-Jul-23	05-Aug-23	12-Aug-23	19-Aug-23	26-Aug-23	02-Sep-23	09-Sep-23	16-Sep-23	23-Sep-23	30-Sep-23		
RECEIPTS																	
Collection of accounts receivable	27,329	1,438	-	-	-	-	-	-	-	-	-	-	-	-	-	28,767	
Collection of sales and taxes	2	-	31,372	31,372	31,372	32,338	32,338	32,338	32,338	29,435	29,435	29,435	29,435	27,415	27,415	27,415	423,453
Other Receipts	3	-	425	425	425	438	438	438	438	399	399	399	399	372	372	372	5,739
Total receipts		27,329	33,236	31,797	31,797	32,776	32,776	32,776	32,776	29,834	29,834	29,834	29,834	27,787	27,787	27,787	457,959
DISBURSEMENTS																	
Inventory vendor payments	4	(10,078)	(23,402)	(23,627)	(22,075)	(22,075)	(23,619)	(23,638)	(23,276)	(23,276)	(23,276)	(18,755)	(18,771)	(19,157)	(19,157)	(20,315)	(314,498)
Sales tax remittances	5	(18,941)	(2,850)	(2,000)	(2,000)	(17,440)	(5,832)	(2,000)	(2,000)	(2,000)	(21,324)	(3,017)	(2,000)	(2,000)	(21,889)	(3,047)	(108,339)
GST collected /(paid)		(48)	33	(62)	(1,294)	73	(24)	(20)	(15)	(125)	(130)	145	141	310	28	(36)	(1,025)
Operating disbursements	6	(605)	(2,130)	(655)	(1,628)	(618)	(1,628)	(1,189)	(1,513)	(577)	(1,513)	(1,217)	(1,433)	(548)	(1,433)	(548)	(17,235)
Total operating disbursements		(29,672)	(28,349)	(26,343)	(26,998)	(40,060)	(31,102)	(26,848)	(26,804)	(25,978)	(46,243)	(22,845)	(22,063)	(21,396)	(42,450)	(23,946)	(441,097)
Other disbursements																	
Interest and principal payments - CIBC revolving facility		-	(351)	-	-	-	-	(289)	-	-	-	(230)	-	-	-	-	(870)
Interest and principal payments - CIBC BCAP loan		-	-	-	-	-	-	(226)	-	-	-	-	-	-	-	-	(226)
Interest and principal payments - CWB demand loan		-	(124)	-	-	-	-	(123)	-	-	-	(123)	-	-	-	-	(370)
Forbearance fee	7	-	-	-	-	(250)	-	-	-	-	(250)	-	-	-	(250)	-	(750)
Restructuring costs	8	-	-	(500)	-	-	(500)	-	(400)	-	-	-	(400)	-	-	-	(1,800)
Total other disbursements		-	(474)	(500)	-	(250)	(500)	(638)	(400)	-	(250)	(354)	(400)	-	(250)	-	(4,017)
Total disbursements		(29,672)	(28,823)	(26,843)	(26,998)	(40,310)	(31,602)	(27,486)	(27,204)	(25,978)	(46,493)	(23,198)	(22,463)	(21,396)	(42,700)	(23,946)	(445,113)
Net cash flow		(2,343)	4,412	4,954	4,800	(7,535)	1,174	5,290	5,572	3,856	(16,659)	6,636	7,371	6,391	(14,913)	3,841	12,846
Opening CIBC Revolving Facility																	
Opening CIBC Revolving Facility		38,541	40,883	36,471	31,517	26,717	34,252	33,078	27,788	22,216	18,361	35,020	28,384	21,013	14,622	29,535	38,541
Net cash flow		2,343	(4,412)	(4,954)	(4,800)	7,535	(1,174)	(5,290)	(5,572)	(3,856)	16,659	(6,636)	(7,371)	(6,391)	14,913	(3,841)	(12,846)
Ending CIBC Revolving Facility		40,883	36,471	31,517	26,717	34,252	33,078	27,788	22,216	18,361	35,020	28,384	21,013	14,622	29,535	25,695	25,695
Pre-Filing CIBC Revolving Facility																	
Opening CIBC Revolving Facility		38,541	11,212	-	-	-	-	-	-	-	-	-	-	-	-	-	38,541
Post-filing receipts		(27,329)	(11,212)	-	-	-	-	-	-	-	-	-	-	-	-	-	(38,541)
Ending CIBC Revolving Facility		11,212	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Post-Filing CIBC Revolving Facility																	
Opening CIBC Revolving Facility		-	29,672	36,471	31,517	26,717	34,252	33,078	27,788	22,216	18,361	35,020	28,384	21,013	14,622	29,535	-
Post-filing receipts		(22,024)	(31,797)	(31,797)	(32,776)	(32,776)	(32,776)	(32,776)	(32,776)	(29,834)	(29,834)	(29,834)	(29,834)	(27,787)	(27,787)	(27,787)	(419,419)
Post-filing disbursements		29,672	28,823	26,843	26,998	40,310	31,602	27,486	27,204	25,978	46,493	23,198	22,463	21,396	42,700	23,946	445,113
Ending CIBC Revolving Facility		29,672	36,471	31,517	26,717	34,252	33,078	27,788	22,216	18,361	35,020	28,384	21,013	14,622	29,535	25,695	25,695

Appendix “E”

AMENDMENT TO FORBEARANCE AGREEMENT AND CREDIT AGREEMENT

THIS AGREEMENT is dated as of July 18, 2023 (this “**Agreement**”).

AMONG:

CAREY MANAGEMENT INC.
(the “**Borrower**”)

- and -

THE GUARANTORS FROM TIME TO TIME PARTY HERETO

- and -

CANADIAN IMPERIAL BANK OF COMMERCE, as Agent
(the “**Agent**”)

- and -

THE LENDERS FROM TIME TO TIME PARTY TO THE CREDIT AGREEMENT
(the “**Lenders**” and, together with the Borrower, the Guarantors and the Agent, the
“**Parties**”)

CONTEXT:

- A.** The Agent and the Lenders have provided certain financing arrangements under a Credit Agreement dated as of September 26, 2017 among the Borrower, the guarantors party thereto, the Agent and the lenders party thereto from time to time (as amended by Amendment No. 1 to Credit Agreement dated May 3, 2018, First Amendment to Credit Agreement dated January 1, 2019, Amendment No. 2 and Consent and Waiver to Credit Agreement dated December 31, 2019, Fourth Amendment to Credit Agreement dated September 2, 2020, Fifth Amendment to Credit Agreement dated March 31, 2021, Sixth Amendment to Credit Agreement dated May 28, 2021, Seventh Amendment and Consent dated October 29, 2021, Eight Amendment to Credit Agreement dated April 4, 2022, Ninth Amendment to Credit Agreement dated January 23, 2023 and as the same may be further amended, restated, supplemented, revised, replaced or otherwise modified from time to time, the “**Credit Agreement**”).
- B.** As of the date of this Agreement, the Credit Parties are in default under the Credit Agreement and the other Loan Documents (as defined in the Credit Agreement).
- C.** Certain of the Credit Parties, being the Borrower, Wallace & Carey Inc. and Loudon Bros Limited (the “**Applicants**”) have obtained an Amended and Restated Initial Order from the Court of King’s Bench (the “**CCAA Court**”) (as amended, supplemented or otherwise modified from time to time, the “**Initial Order**”) under the *Companies’ Creditors Arrangement Act* (Canada) (the “**CCAA**”) (such proceedings being the “**CCAA Proceedings**”) and the Credit Parties have requested ongoing support of the Agent and the Lenders during the CCAA Proceedings.
- D.** The Agent and the Lenders agreed to continue to provide the facilities set out in the Credit Agreement subject to the terms and conditions of a Forbearance Agreement entered into on June 22, 2023 (the “**Forbearance Agreement**”), and approved (as may be amended from time to time) by the CCAA Court on June 22, 2023.

- E. The Borrower has requested that the Lenders provide certain Loans for which the conditions set out in Section 4.2 of the Credit Agreement and the Forbearance Agreement are not satisfied (the “**Draw Conditions**”). Among other things, the Borrower has advised that it requires Loans to fund the purchase of Inventory that has not yet been delivered and, as a result, would not be Eligible Inventory and would not be included in the Borrowing Base. The Lenders and the Agent have agreed to amend the Credit Agreement to provide for the inclusion of Undelivered Inventory (as defined below) in the Borrowing Base on the terms set out herein to permit Loans to be made to fund the purchase price of the Undelivered Inventory (as defined below).

THEREFORE, in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Credit Agreement Definitions

Each capitalized term used and not otherwise defined in this Agreement will have the meaning assigned to it in the Credit Agreement or the Forbearance Agreement.

1.2 Entire Agreement

This Agreement, together with the Credit Agreement, the Forbearance Agreement and the other Loan Documents and the other agreements and documents to be delivered under this Agreement, constitute the entire agreement between the Parties pertaining to the subject matter of this Agreement and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties, and there are no representations, warranties or other agreements between the Parties in connection with the subject matter of this Agreement except as specifically set out in this Agreement, the Credit Agreement, the Forbearance Agreement, the other Loan Documents or the other agreements and documents delivered under this Agreement.

1.3 Business Day

Whenever any payment to be made or action to be taken under this Agreement is required to be made or taken on a day other than a Business Day, the payment is to be made or action taken on the next Business Day following.

1.4 Certain Rules of Interpretation

- (a) In this Agreement, words signifying the singular number include the plural and vice versa, and words signifying gender include all genders. Every use of the word “including” in this Agreement is to be construed as meaning “including, without limitation”.
- (b) The division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement.
- (c) References in this Agreement to an Article, Section, Schedule or Exhibit are to be construed as references to an Article, Section, Schedule or Exhibit of or to this Agreement unless the context requires otherwise.
- (d) Unless otherwise specified in this Agreement, time periods within which or following which any payment is to be made or act is to be done will be calculated by excluding the day on which the period commences and including the day on which the period ends. If the last day of a time period is not a Business Day, the time period will end on the next Business Day.

- (e) Unless otherwise specified, any reference in this Agreement to any (a) statute includes all regulations made under that statute, and is to be construed as a reference to that statute as amended, supplemented or replaced from time to time, and (b) to any agreement means such agreement as amended, supplemented, restated, or replaced subject to compliance with any restrictions thereon in the Loan Documents.
- (f) Unless otherwise specified, the word "dollar" and the "\$" sign refer to Canadian currency, and all amounts to be advanced, paid, tendered or calculated under this Agreement are to be advanced, paid, tendered or calculated in Canadian currency.

ARTICLE 2 AMENDMENTS, COVENANTS AND WAIVER

2.1 Amendments to Credit Agreement

With effect on the Amendment Effective Date (as defined below), the Credit Agreement is amended as follows:

- (a) Section 1.1 (Defined Terms) of the Credit Agreement is hereby amended by adding the following defined terms in alphabetical order with the existing definitions:

"Eligible Undelivered Inventory" means all Undelivered Inventory of such Credit Party valued in Canadian Dollars on a lower of Standard Cost or market basis in accordance with GAAP, with detailed calculations of lower of cost or market to occur on at least a monthly basis, which meets such standards of eligibility as the Agent shall establish from time to time in its Permitted Discretion; provided that, in any event, no Undelivered Inventory shall be deemed Eligible Undelivered Inventory unless each of the following statements is accurate and complete (and by including such Undelivered Inventory in any computation of the applicable Borrowing Base, the Borrower shall be deemed to represent and warrant to the Agent, each Issuing Bank and the Lenders, to the best of its knowledge, the accuracy and completeness of such statements and the compliance of such Inventory with each such other eligibility standard established by the Agent):

(1) such Undelivered Inventory meets all of the criteria for "Eligible Inventory" except for clause (2) thereof as it is not in the possession of the Credit Party or a bailee that has delivered an Acceptable Bailee Letter;

(2) the Agent has received a no-offset and acknowledgement of title transfer letter, in form and substance satisfactory to the Agent, from the supplier of such Undelivered Inventory;

(3) no more than 10 days has passed since the time that such Undelivered Inventory has been paid in full; and

(4) such Undelivered Inventory is not Undelivered Inventory which the Agent, in the exercise of Permitted Discretion, determines to be not acceptable for any other reason.

"Undelivered Inventory" means all Inventory of the Credit Parties which has been fully paid for by such Credit Party, an invoice for such Inventory has been issued to such Credit Party, title has transferred to such Credit Party and such Inventory is located in Canada, but the Inventory has not been delivered into the possession of such Credit Party as it remains in the possession of a supplier or any other person shipping such Inventory to such Credit Party.

- (b) The definition of "Borrowing Base" in Section 1.1 (Defined Terms) of the Credit Agreement is hereby amended by (A) renumbering the existing clauses (iii) and (iv) to clauses (iv) and (v), and (B) adding a new clause (iii) as follows:

- “(iii) plus, the lesser of (A) 70% of the lower of cost or fair market value of all Eligible Undelivered Inventory, and (B) 75% of the appraised net orderly liquidation value of all Eligible Undelivered Inventory, provided that, the aggregate amount of Eligible Undelivered Inventory used to calculate the Borrowing Base shall not exceed \$15,000,000 (reduced to \$13,000,000 as of August 18, 2023).”
- (c) The definition of “Priority Payables” in Section 1.1 (Defined Terms) of the Credit Agreement is hereby amended by adding the words “Eligible Undelivered Inventory” immediately after the words “Eligible Accounts” where they appear in such definition.
- (d) Section 5.1 (Financial Statements and Other Information) of the Credit Agreement is hereby amended by adding the following provisions to the end of clause (f):
- “(xii) a calculation and report as to the Undelivered Inventory which does not meet the definition of Eligible Undelivered Inventory;
- (xiii) a separate listing of Eligible Undelivered Inventory containing the supplier name, the date of payment in full, and the date of shipment;
- (xiv) copies of the purchase orders and payment receipt confirmations from each applicable supplier in respect of Eligible Undelivered Inventory; and
- (xv) any additional information and reports pertaining to Eligible Undelivered Inventory as the Agent may request in its Permitted Discretion.”
- (e) Section 5.1 (Financial Statements and Other Information) of the Credit Agreement is hereby amended by adding the following provisions to the end of clause (g):
- “(x) a calculation and report as to the Undelivered Inventory which does not meet the definition of Eligible Undelivered Inventory;
- (xi) a separate listing of Eligible Undelivered Inventory containing the supplier name, the date of payment in full, and the date of shipment;
- (xii) copies of the purchase orders and payment receipt confirmations from each applicable supplier in respect of Eligible Undelivered Inventory; and
- (xiii) any additional information and reports pertaining to Eligible Undelivered Inventory as the Agent may request in its Permitted Discretion.”
- (f) Section 7.2 (Remedies) of the Credit Agreement is hereby amended by adding the words “and/or Eligible Undelivered Inventory” immediately after the words “Eligible Inventory” where they appear in clause (a) of such section.

2.2 **SISP and Milestones**

- (a) With effect from the Amendment Effective Date, Section 4.1(d)(iii) of the Forbearance Agreement is hereby deleted and the following is hereby inserted in its place:

The Applicants agree to comply with the timeline set forth in Schedule 5 hereto with respect to (i) a Plan on terms acceptable to the Agent and the Lenders; and (ii) identification and selection of a financial advisor to advise on a process to solicit interest in and opportunities for a sale of, or investment in, or refinancing of the Credit Parties’ business and assets (a “**SISP**”) that may be implemented as an alternative to or in parallel with the negotiation of a Plan. The Applicants acknowledge that the Agent’s and the Lenders’ acceptance of

continued accommodations set out herein in connection with any of the steps set out in Schedule 5 may be conditional upon the concurrent pursuit of a SISP or alternative pursuit of a SISP (including if any milestone in Schedule 5 is not satisfied).

- (b) With effect from the Amendment Effective Date, Schedule 5 to the Forbearance Agreement is hereby deleted and replaced with Exhibit "A" attached hereto.

ARTICLE 3 FEES

3.1 Amendment Fee

- (a) In consideration of the amendments set out in this Agreement, the Borrower agrees to pay to the Agent a fee for the benefit of the Revolving Lenders in the amount of \$25,000, which shall be fully earned and payable upon execution of this Agreement (the "**Amendment Fee**"), which fee shall be in addition to the ABL DIP Fee, which shall remain payable in accordance with the terms of the Forbearance Agreement.
- (b) The Amendment Fee is in addition to all other fees (including legal fees), interest, costs, expenses and other amounts payable in connection with this Agreement, the Credit Agreement, the Forbearance Agreement and the other Loan Documents (including fees contemplated in the Credit Agreement to the extent that payment has not been received by the Agent as at the date hereof) and may be charged by the Agent to any account of the Borrower maintained by the Lenders. The Amendment Fee will be fully earned by the Agent despite any failure by any Credit Party to comply with any other term of this Agreement.

ARTICLE 4 ACKNOWLEDGEMENTS AND CONFIRMATIONS

- 4.1 Without limiting the confirmations, acknowledgments and agreements contained in the Forbearance Agreement, each Credit Party confirms, acknowledges and agrees that:
- (a) the Credit Agreement and the other Loan Documents remain in full force and effect as at the date hereof, except as specifically amended by the Forbearance Agreement and this Agreement. The Credit Agreement shall henceforth be read and construed in conjunction with the Forbearance Agreement and this Agreement;
- (b) the Agent and the Lenders have not waived the Existing Defaults and nothing contained in this Agreement or the transactions contemplated by this Agreement will be deemed to constitute any such waiver;
- (c) except for obligations in respect of accrued unpaid tobacco sales taxes not to exceed \$10,653,860.42, which are the subject of the Tobacco Tax Payment Plans, as at the date of this Agreement, the Credit Parties have paid or caused to be paid and satisfied when due all amounts in respect of income taxes, provincial sales taxes, tobacco taxes and other excise taxes, GST, HST, employee payroll remittances, employee wages and other obligations which have or may constitute a Priority Payable;
- (d) neither the Borrower, nor any other Credit Party has received, or is aware of any pending issuance of, any notice of garnishment from a Governmental Authority;

**ARTICLE 5
CONDITIONS PRECEDENT TO THIS AGREEMENT**

5.1 Conditions Precedent

- (a) The amendments contemplated hereunder shall be effective upon the date (the "**Amendment Effective Date**") of satisfaction of the following conditions precedent (the "**Conditions Precedent**"), which must occur on or before 5:00 p.m. (Calgary Time) on July 19, 2023:
- (i) the Agent has received a duly authorized, executed and delivered PDF copy of this Agreement executed by each of the Credit Parties;
 - (ii) the payment of all fees, disbursements and taxes owing to the Agent's and the Lenders' legal counsel and to PricewaterhouseCoopers Inc. (as advisor to the Agent and the Lenders) at such time pursuant to a delivered invoice; it being acknowledged and agreed by the Credit Parties that, in satisfying this condition precedent, each such amount payable shall be automatically debited by the Agent from the operating accounts of the Borrower without any further consent or agreement of the Credit Parties being required in respect thereof;
 - (iii) the Agent shall have received all other documentation reasonably required by the Agent and its counsel in connection with this Agreement (including, without limitation, such further assurances, resolutions, opinions and additional confirmations or other agreements relating to the Agent's Liens), all duly authorized, executed and delivered in form and substance satisfactory to the Agent in its sole discretion;
 - (iv) other than the Existing Defaults and any Events of Default solely as a consequence of the commencement of the CCAA Proceedings, no event shall have occurred and be continuing, or will result from the consummation of the transactions contemplated by this Agreement that would constitute a Default or an Event of Default;
 - (v) the Amendment Fee shall have been paid by the Borrower it being acknowledged and agreed by the Credit Parties that, in satisfying this condition precedent, the Amendment fee shall be automatically debited by the Agent from the operating accounts of the Borrower without any further consent or agreement of the Credit Parties being required in respect thereof, and
 - (vi) as of the date set out above in this Section 5.1, Excess Availability shall be not less than \$1,500,000, which shall be calculated after applying the Availability Block of \$2,500,000.

The Conditions Precedent are for the sole benefit of the Agent and the Lenders and may be waived only by the Agent in writing.

**ARTICLE 6
GENERAL**

6.1 Effect of this Agreement

Except as modified by this Agreement, no other changes or modifications to the Credit Agreement, the Forbearance Agreement or the other Loan Documents are intended or implied, and in all other respects the Credit Agreement and the other Loan Documents are specifically acknowledged, ratified and confirmed by the Credit Parties. To the extent of conflict between the terms of this Agreement, the Credit Agreement, the Forbearance Agreement, and the other Loan Documents, the terms of this Agreement will govern.

6.2 Release

- (a) In consideration of this Agreement and for other good and valuable consideration, each Credit Party, on their own behalf and on behalf of their respective successors, assigns, and other legal representatives, absolutely, unconditionally and irrevocably releases the Agent, the Lenders, and their present and former affiliates, subsidiaries, divisions, predecessors, directors, officers, legal counsel, consultants, employees, agents and other representatives, and their successors and assigns (all of which are referred to collectively as the “**Releasees**” and individually as a “**Releasee**”), of and from all demands, actions, causes of action, suits, covenants, contracts, controversies, agreements, promises, sums of money, accounts, bills, reckonings, damages and any and all other claims, counterclaims, defences, rights of set-off, demands and liabilities (individually, a “**Claim**” and collectively, “**Claims**”) known or unknown, both at law or in equity, that such Credit Party or any of their respective successors, assigns, or other legal representatives may now or later have or claim against any of the Releasees by reason of any circumstance, action, cause or thing which arises at any time on or prior to the date of this Agreement, including for or on account of, or in relation to, or in any way in connection with (i) this Agreement, the Credit Agreement, the Forbearance Agreement or any of the other Loan Documents or any transactions under or related to, this Agreement, the Credit Agreement, the Forbearance Agreement or any of the other Loan Documents, and (ii) any and all proposed refinancings of any Credit Party by the Lenders (past or present), including, without limitation, any and all prior proposed offers of finance (whether consummated or not), term sheets, indicative and non-binding term sheets or negotiations for financing, between any of the Lenders and any Credit Party;
- (b) each Credit Party understands, acknowledges and agrees that the release set out in Section 6.2(a) may be pleaded as a full and complete defence and may be used as a basis for an injunction against any action, suit or other proceeding which may be instituted, prosecuted or attempted in breach of the provisions of that release; and
- (c) each Credit Party agrees that no fact, event, circumstance, evidence or transaction which could now be asserted or which may later be discovered will affect in any manner the final, absolute and unconditional nature of the release set out in Section 6.2(a).

6.3 Survival of Representations and Warranties

All representations and warranties made in this Agreement or any other document delivered in connection with this Agreement will survive the execution and delivery of this Agreement and the other documents and no investigation by the Agent or any closing will affect the representations and warranties or the right of the Agent to rely upon them.

6.4 Governing Law

This Agreement is governed by, and is to be construed and interpreted in accordance with, the laws of the Province of Alberta and the federal laws of Canada effective therein.

6.5 Reviewed by Legal Counsel

Each Credit Party represents and warrants to the Agent and the Lenders that it:

- (a) understands fully the terms of this Agreement and the consequences of the execution and delivery of this Agreement;
- (b) has been afforded an opportunity to have this Agreement reviewed by, and to discuss this Agreement and any documents executed in connection herewith with, such lawyers and other persons as such Credit Party may wish; and

- (c) has entered into this Agreement and executed and delivered all documents in connection herewith of its own free will and accord and without threat, duress or other coercion of any kind by any Person.

The Parties hereto acknowledge and agree that neither this Agreement nor the other documents or instruments executed pursuant hereto will be construed more favourably in favour of one than the other based upon which Party drafted the same, it being acknowledged that all Parties hereto contributed substantially to the negotiation and preparation of this Agreement and the other documents and instruments executed pursuant hereto or in connection herewith.

6.6 Time of Essence

Time is of the essence in all respects of this Agreement.

6.7 Notices

Any Communication or notice must be in writing and delivered in accordance with the Credit Agreement.

6.8 Further Assurances

Each Credit Party will, at its own cost, execute and deliver all further agreements and documents and provide all further assurances as may be reasonably required by the Agent to give effect to this Agreement and, without limiting the generality of the foregoing, will do or cause to be done all acts and things, execute and deliver or cause to be executed and delivered all agreements and documents and provide such assurances, undertakings and information as may be required from time to time by all regulatory or governmental bodies or stock exchanges having jurisdiction over the affairs of a Party or as may be required from time to time under applicable securities legislation.

6.9 Confirmation of Documents and Terms

Each of the Credit Parties hereby agrees to the terms of this Agreement and confirms to and agrees with the Agent and the Lenders that its liabilities and obligations, and the Liens created under or pursuant to all Security Documents, Loan Documents and other documents and instruments executed in connection with the Credit Agreement and accommodations provided for or contemplated in the Credit Agreement continue in full force and effect in accordance with their respective terms and that all Security Documents and other Loan Documents executed by it secure and shall continue to secure the Obligations.

6.10 No Merger or Novation

All Security Documents, other Loan Documents and other documents and instruments provided to the Agent or otherwise entered into by the Credit Parties prior to the date hereof in connection with the Credit Agreement and accommodations provided for or contemplated in the Credit Agreement, there being no novation or merger of the Credit Agreement (as amended pursuant to this Agreement), any of the Agent's Liens under the Security Documents or any of the other Loan Documents, and all Obligations continue under the Credit Agreement (as amended by the Forbearance Agreement and this Agreement) and the other Loan Documents.

6.11 Severability

Each provision of this Agreement is distinct and severable. If any provision of this Agreement, in whole or in part, is or becomes illegal, invalid or unenforceable in any jurisdiction by a court of competent jurisdiction, the illegality, invalidity or unenforceability of that provision will not affect:

- (a) the legality, validity or enforceability of the remaining provisions of this Agreement; or

(b) the legality, validity or enforceability of that provision in any other jurisdiction.

6.12 Counterparts

This Agreement may be executed and delivered by the Parties in one or more counterparts, each of which when so executed and delivered will be an original and such counterparts will together constitute one and the same instrument.


6.13 Electronic Signatures

Delivery of this Agreement by facsimile or other electronic transmission (including through "pdf" format via email) constitutes valid and effective delivery.

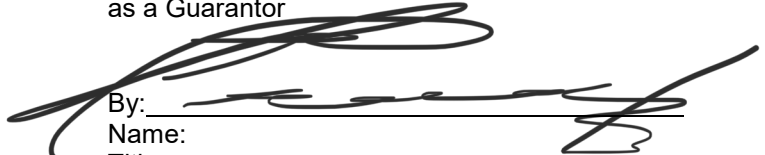
THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK.

Each of the Parties has executed and delivered this Agreement effective as of the date first written above.

CAREY MANAGEMENT INC.,
as the Borrower

By: 
Name: _____
Title: _____

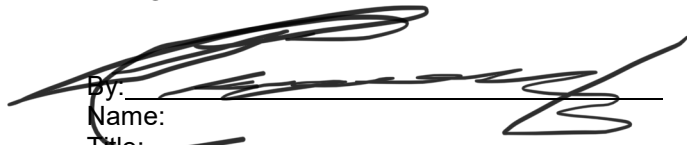
WALLACE & CAREY INC.,
as a Guarantor

By: 
Name: _____
Title: _____

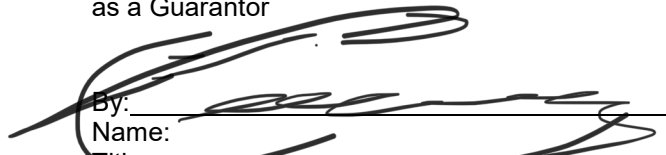
LOUDON BROS. LIMITED,
as a Guarantor

By: 
Name: _____
Title: _____


SPRUCE IT UP LAND CORP.,
as a Guarantor

By: 
Name: _____
Title: _____

772921 ALBERTA INC.,
as a Guarantor

By: 
Name: _____
Title: _____

RIDGE MEADOWS PROPERTIES LTD.,
as a Guarantor

By: 
Name: _____
Title: _____

RETLOGISTICS INC.,
as a Guarantor

By: 
Name: _____
Title: _____


**CANADIAN IMPERIAL BANK OF COMMERCE, as
Agent and as Lender**

Per



Name: Anthony Tsuen
Title: Authorized Signatory

Per



Name: Steven Filippi
Title: Authorized Signatory

EXHIBIT A

**SCHEDULE 5
RESTRUCTURING TIMELINE**

Date	Milestone
Within 40 days following the date of the hearing of the application for the Initial Order	The Credit Parties shall have identified and selected a financial advisor acceptable to the Agent and the Lenders, to advise on a process to solicit interest in and opportunities for a sale of, or investment in, or refinancing of the Credit Parties' business and assets to be implemented as an alternative to or in parallel with the negotiation of a Plan.
Within 40 days following the date of the hearing of the application for the Initial Order	The Applicants shall deliver to the Agent a term sheet summarizing the material commercial terms of the proposed Plan for which support will be solicited from the unsecured creditors of Wallace & Carey Inc. and Loudon Bros Limited, which term sheet shall be in form and substance acceptable to the Agent (the " Plan Term Sheet ").
Within 40 days following the date of the hearing of the application for the Initial Order	The Applicants shall deliver a pro forma business model and financial forecast for the restructured business of the Applicants following implementation of the proposed Plan consistent with the Plan Term Sheet, which shall be in form and substance acceptable to the Agent (the " Business Model ").
Within 60 days following the date of the hearing of the application for the Initial Order	If the Plan Term Sheet and the Business Model milestones above are satisfied, then the Applicants shall provide confirmation in form and substance acceptable to the Agent that the required majorities of creditors of the Applicants support and will vote in favour of the Plan on the terms set out in the Plan Term Sheet.
Within 90 days following the date of the hearing of the application for the Initial Order	If the above milestones are satisfied, the Applicants, with the consent of the Agent, shall submit a motion to the CCAA Court for the filing of a Plan acceptable to the Agent and seeking a Plan Filing and Meeting Order and a Claims Procedure Order acceptable to the Agent.
Within 120 days following the date of the hearing of the application for the Initial Order	If a Plan has been filed as set out above, such Plan shall have been voted upon and approved by the requisite majorities of creditors required pursuant to the CCAA.

November 30, 2023	The Plan shall have been implemented.
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Appendix “F”

August 2, 2023

BY FACSIMILE & EMAIL

**Carey Management Inc.
5445 – 8th Street NE
Calgary, AB T2K 5R9**

**Attention: Patrick Carey, Brian Birnie, Eric Rolheiser
Facsimile: (403)295-0007**

Dear Sirs:

Re: Credit Agreement among Carey Management Inc. (the Borrower), the guarantors party thereto from time to time (the Guarantors), Canadian Imperial Bank of Commerce, as agent (the Agent) and the lenders from time to time party thereto (the Lenders)

Reference is made to the credit agreement dated as of September 27, 2017 among the Borrower, the Guarantors, the Agent and the Lenders (as amended by Amendment No. 1 to Credit Agreement dated May 2, 2018, First Amendment to Credit Agreement dated January 1, 2019, Amendment No. 2 and Consent and Waiver to Credit Agreement dated December 31, 2019, Fourth Amendment to Credit Agreement dated September 2, 2020, Fifth Amendment to Credit Agreement dated March 31, 2021, Sixth Amendment to Credit Agreement dated May 28, 2021, Seventh Amendment and Consent dated October 29, 2021, Eighth Amendment to Credit Agreement dated April 4, 2022, Ninth Amendment to Credit Agreement dated January 23, 2023, Amendment to Forbearance Agreement and Credit Agreement dated July 18, 2023, and as the same may be further amended, restated, supplemented, revised, replaced or otherwise modified from time to time, the **Credit Agreement**).

Reference is also made to the Forbearance Agreement entered into on June 22, 2023, and approved (as may be amended from time to time) by the CCAA Court on June 22, 2023, as amended by an Amendment to Forbearance Agreement and Credit Agreement dated July 18, 2023 (the "**Forbearance Agreement**")

Capitalized terms used in this letter and not otherwise defined herein shall have the meaning specified in the Credit Agreement and the Forbearance Agreement.

Please be advised that certain Terminating Events have occurred and continue to exist under the Forbearance Agreement (including those listed on Schedule "A" hereto) (collectively, the "**Existing Terminating Events**").

Pursuant to the Forbearance Agreement, upon the occurrence of a Terminating Event, the Forbearance Period automatically terminated without the requirement for any notice to any Credit Party or any other action whatsoever by the Agent and the Agent and the Lenders shall be entitled to exercise any and all rights and remedies under the Credit Agreement and the other Loan Documents without further notice to the Credit Parties.

This letter shall serve to advise you that (i) the Lenders and the Agent have not waived, and are not in a position to waive, the Existing Terminating Events (or the Existing Defaults); (ii) as the conditions of Section 4.2 of the Credit Agreement and the conditions of the Forbearance Agreement with respect to Borrowings cannot be satisfied due to the Existing Defaults and the Terminating Events, the Lenders are not obligated to make any Loan or to permit the issuance of any Letter of Credit or to permit the Borrower to obtain any F/X Contract, and any decision by the Lenders or the Agent to provide, or continue to provide, a Borrowing to the Borrower is entirely at the discretion of the Lenders and the Agent which decision may be revoked at any time and nothing herein shall be construed to obligate the Lenders or the Agent to make any Borrowings available, and (iii) any provisions of Borrowing (if any) to the Borrower or any delay or any

failure to exercise any rights, remedies, powers and privileges by the Lenders or the Agent under the Credit Agreement, the Forbearance Agreement or the other Loan Documents with respect to the Existing Terminating Events, Existing Defaults or any other Default or Event of Default (whether now existing or hereafter occurring) shall not be, and shall not be construed as, a waiver thereof. Further, all of the provisions of the Credit Agreement and the other Loan Documents remain in full force and effect.

This letter is written under reserve of, and without prejudice to, all of the rights, remedies and recourses of Lenders and the Agent under the Loan Documents and the Lenders and the Agent reserve their rights to fully invoke any and all of their rights, remedies, powers or privileges under the Credit Agreement, the Forbearance Agreement and the Loan Documents or Applicable Law (including, without limitation the right to take such steps and do such things, at any time, as they may consider necessary to protect or preserve their positions, all without further notice to the Borrower or any other Credit Party or Person) in respect of the Existing Terminating Event, Existing Default or any other Default or Event of Default that may now or hereafter exist.

The Agent and the Lender request that the parties and their advisors immediately commence discussions to review next steps in view of this matter.

Yours very truly,

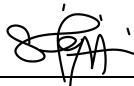
CANADIAN IMPERIAL BANK OF COMMERCE, as
Lender

Per:



Name: Anthony Tsuen
Title: Authorized Signatory

Per:



Name: Steven Filippi
Title: Authorized Signatory

Copy to:

Miller Thomson LLP

3000, 700 – 9th Avenue S.W.

Calgary, AB T2P 3V4

Attention: Michael Morcom, Brian Wells,
James Reid and Larry Ellis

Facsimile: (403) 262-0007

Schedule "A"

Without limiting any other Terminating Events, Defaults or Events of Default that may exist, the following Terminating Events have occurred:

1. Pursuant to Section 5.4(f) of the Forbearance Agreement, in the week ended July 23, 2023 the actual cumulative Receipts (as so described in the Approved Cash Flow) were more than 5% below the forecasted cumulative Receipts amount (as shown in the Approved Cash Flow).
2. Pursuant to Section 5.4(f) of the Forbearance Agreement, in the week ended July 23, 2023 the actual weekly Receipts were more than 15% below forecasted weekly Receipts amounts (as shown in the Approved Cash Flow).
3. Pursuant to Section 5.1(a) due to the Additional Default arising from the failure to deliver the Borrower's and its Subsidiaries' unaudited combined balance sheet and related statements of income, retained earnings and changes in financial position as of the fiscal period ending July 10, 2023 in accordance with the terms of and within the time required by Section 5.1(b) of the Credit Agreement.
4. Pursuant to Section 5.1(l) as a result of the failure of the Applicants to deliver a Plan Term Sheet in form and substance acceptable to the Agent, as required pursuant to Section 4.1(d)(iii).
5. Pursuant to Section 5.1(l) as a result of the failure of the Applicants to have identified and selected a financial advisor in form and substance acceptable to the Agent, as required pursuant to Section 4.1(d)(iii).

Appendix “G”

August 4, 2023

BY FACSIMILE & EMAIL

Carey Management Inc.
5445 – 8th Street NE
Calgary, AB T2K 5R9

Attention: Patrick Carey, Brian Birnie, Eric Rolheiser

and to

KSV Restructuring Inc., as Monitor of Carey Management Inc. et al.
220 Bay Street, 13th Floor, PO Box 20
Toronto, Ontario, M5J 2W4

Attention: Bobby Kofman

Dear Sirs:

Re: Credit Agreement among Carey Management Inc. (the Borrower), the guarantors party thereto from time to time (the Guarantors), Canadian Imperial Bank of Commerce, as agent (the Agent) and the lenders from time to time party thereto (the Lenders)

Reference is made to the credit agreement dated as of September 27, 2017 among the Borrower, the Guarantors, the Agent and the Lenders (as amended, restated, supplemented, revised, replaced or otherwise modified from time to time, the **Credit Agreement**).

Reference is also made to the Forbearance Agreement entered into on June 22, 2023, and approved (as may be amended from time to time) by the CCAA Court on June 22, 2023, as amended by an Amendment to Forbearance Agreement and Credit Agreement dated July 18, 2023 (the **"Forbearance Agreement"**).

Reference is also made to the notice dated August 2, 2023 provided by the Agent to the Borrower and the Guarantors regarding certain Terminating Events under the Forbearance Agreement (the **"Notice of Terminating Events"**).

Capitalized terms used in this letter and not otherwise defined herein shall have the meaning specified in the Credit Agreement, the Forbearance Agreement and the Notice of Terminating Events.

The Agent hereby confirms that notwithstanding the Existing Terminating Events, Revolving Loans shall continue to be made under the terms of the Credit Agreement and the Forbearance Agreement until further written notice (the **"Notice"**) is delivered by the Agent to the Borrower (with a copy to the Monitor) and at least two business days following the delivery of the Notice have passed. Following delivery of such Notice any Revolving Loans shall not exceed amounts required for critical ordinary course post-filing operating expenditures that are due and payable and approved by the Monitor. For certainty, the Notice may be delivered by the Agent in its sole discretion.

The Agent and the Lenders intend to engage in discussions with the Borrower and the Guarantors regarding a further amendment to the Forbearance Agreement to proceed, subject to approval of the CCAA Court in the Applicants' CCAA proceedings, with a sale and investment solicitation process on terms acceptable to the Agent and the Lenders.

The Lenders and the Agent have not waived the Existing Terminating Events (or the Existing Defaults). Any provisions of Borrowing to the Borrower or any delay or any failure to exercise any rights, remedies, powers and privileges by the Lenders or the Agent under the Credit Agreement, the Forbearance Agreement or the other Loan Documents with respect to the Existing Terminating Events, Existing Defaults or any other Default or Event of Default (whether now existing or hereafter occurring) shall not be, and shall not be construed as, a waiver thereof. Further, subject to the terms hereof, all of the provisions of the Credit Agreement and the other Loan Documents remain in full force and effect. This letter is written under reserve of, and subject to the terms hereof without prejudice to, all of the rights, remedies and recourses of Lenders and the Agent under the Loan Documents.

Yours very truly,

CANADIAN IMPERIAL BANK OF COMMERCE, as
Lender

Per:



Name: Anthony Tsuen
Title: Authorized Signatory

Per:



Name: Steven Filippi
Title: Authorized Signatory

Copy to:

Miller Thomson LLP
3000, 700 – 9th Avenue S.W.
Calgary, AB T2P 3V4
Attention: James Reid and Larry Ellis
Facsimile: (403) 262-0007