

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***

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

DOCUMENT                   **FOURTH REPORT OF THE MONITOR**  
**SEPTEMBER 18, 2023**

ADDRESS FOR  
SERVICE AND  
CONTACT  
INFORMATION OF  
PARTY FILING THIS  
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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 (the “**Monitor**”). KSV is filing this report (the “**Fourth Report**”) as Monitor.

### 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 to and including July 1, 2023 (the “**Stay Period**”);
  - b) approved the Applicants’ use of the centralized cash management system provided by Canadian Imperial Bank of Commerce (“**CIBC**” or the “**Lender**”) to the Applicants;
  - c) granted charges on the Applicants’ current and future assets, property and undertakings 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), the Monitor, and the Monitor’s legal counsel (Cassels Brock & Blackwell LLP), 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 for 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 and the Court granted:
  - a) an amended and restated Initial Order (the “**ARIO**”), attached hereto as **Appendix “A”**, which, among other things:
    - i. extended the Stay Period to and including September 20, 2023;
    - ii. increased the maximum amount of the 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 certain fuel service cards, known as the Mobil Fleet Cards.
3. On August 9, 2023, the Monitor prepared and filed its second report to Court (the “**Second Report**”) which, among other things:
  - a) was drafted in the context of Section 23(1)(d)(i) of the CCAA, which requires the Monitor to file a report with the Court advising on the state of a company’s business and financial affairs upon ascertaining a material adverse change (a “**MAC**”) in the company’s projected cash flow or financial circumstances;
  - b) discussed challenges being faced by the Applicants and the efforts being taken at the time to address those challenges;

- c) provided a comparison of the Applicants' cash flow forecast for the period June 18 to September 30, 2023 against actual results; and
  - d) advised that the Monitor would file a further report with the Court advising on the status of the efforts to address the issues resulting from the MAC.
4. On August 11, 2023, the Monitor prepared and filed a supplement to the Second Report (the "**Second Report Supplement**") that provided an update on the Applicants' liquidity following the Applicants entering into the second amendment to the Forbearance Agreement dated August 10, 2023 (the "**Second Forbearance Amendment**"). The Second Forbearance Amendment, among other things, provided the Applicants with enhanced availability of approximately \$10 million of credit under their existing financing arrangements with CIBC. At the time, the Applicants advised that the additional capital would address their operating challenges and would lead to improved customer fill rates, and therefore financial performance. Copies of the Second Report and the Second Report Supplement are attached as **Appendices "B"** and **"C"**, respectively, without appendices.
5. On August 21, 2023, the Monitor prepared and filed its Third Report to Court (the "**Third Report**") which provided, among other things, the Monitor's recommendations that the Court issue:
- a) an order (the "**SISP Approval Order**") among other things, approving the terms of a Sale and Investment Solicitation Process (the "**SISP**") and authorizing the Applicants, in consultation and co-operation with Alvarez & Marsal Canada Securities ULC ("**A&M**"), as the Applicants' Financial Advisor, and under the oversight of the Monitor, to conduct the SISP; and
  - b) an order (the "**Ancillary Order**"), among other things:
    - i. extending the stay of proceedings to and including November 30, 2023;
    - ii. approving the engagement of A&M as the Applicants' Financial Advisor, pursuant to an agreement dated August 13, 2023 between the Applicants and A&M, including:
      - increasing the amount of the Administration Charge from \$750,000 to \$850,000 to include a work fee and restructuring fee payable to A&M in connection with the SISP and its role as the Financial Advisor; and

- granting a charge on the Applicants' current and future assets, property and undertakings in favour of A&M to secure the Transaction Fee (as defined below), which is only subordinate to the Administration Charge.

## **1.2 Purposes of this Fourth Report**

1. The purposes of this Fourth Report are to:
  - a) advise the Court and stakeholders of a further MAC in the Applicants' projected cash flow, in accordance with Section 23(1)(d)(i) of the CCAA;
  - b) provide an update on the SISP; and
  - c) discuss the next steps in these proceedings.

## **1.3 Scope and Terms of Reference**

1. In preparing this Fourth 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 Fourth 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 cash flow forecasts discussed herein, as outlined in the Chartered Professional Accountants of Canada Handbook, has not been performed. Future oriented financial information relied upon in this Fourth 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 references to currency in this Report are to 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 subsidiaries, none of which are subject to these proceedings.
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 which until recently operated as its Northwestern Ontario branch. The Applicants are presently winding down the operations of Loudon Bros. Aspects of Loudon's business will be continued by Wallace & Carey from its other locations. All payroll and vacation pay amounts owing to Loudon Bros' employees have been, or will be, paid in full.
4. Through Wallace & Carey, the business continues to supply and distribute approximately 7,500 different products to several customers across the country. Wallace & Carey remains an important supplier to its customers, which depend on the continued operation of Wallace & Carey's business. 7-Eleven Canada Inc. ("**7-Eleven**") is the most significant customer of Wallace & Carey.
5. As of the Filing Date, the Logistics Companies employed approximately 600 full-time and 50 part-time employees. Wallace & Carey presently has approximately 600 employees. CMI has three employees, including Patrick Carey, the Chair, Daniel Elrod, the Chief Executive Officer, and an administrative employee.
6. CIBC provides CMI with a revolving asset-based loan (the "**CIBC Revolving Loan**") and term loan facility, which is guaranteed by the Logistics Companies and various other entities within the Carey corporate group (the "**CIBC Facility**"). As of the date of this Fourth Report, the amount owing under the CIBC Facility was approximately \$45.5 million. Pursuant to the terms of the Forbearance Agreement, all amounts owing to CIBC as of the Filing Date under the revolving portion of the CIBC Facility (being approximately \$38.54 million) have been repaid through accounts receivables collections, and all amounts advanced by CIBC since that time are secured by the Lender Priority Charge.

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 initial 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**”) provides support for the relief sought by the Applicants at the Comeback Application. Affidavit No. 1 of Eric Rolheiser, President and CEO of Wallace & Carey sworn on August 21, 2023 (the “**First Rolheiser Affidavit**”) provides support for the relief sought by the Applicants at the August 23 Application.
8. KSV’s pre-filing report dated June 22, 2023 (the “**Pre-Filing Report**”) and the First Report provide additional background information about these proceedings. The First Report, Pre-Filing Report, Second Report, Second Report Supplement and Third Report are collectively referred to herein as the “**Previous Reports**”. Court materials filed in these proceedings, including this Fourth Report and Previous Reports, are available on the Monitor’s case website at [www.ksvadvisory.com/experience/case/wallace-and-carey](http://www.ksvadvisory.com/experience/case/wallace-and-carey).

### 3.0 Liquidity Situation

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 Applicants’ first cash flow filed in these proceeding was prepared (the “**Initial Cash Flow Forecast**”). The pre-payment terms, which essentially continue to this day, 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. This impaired the Logistics Companies’ ability to source fresh inventory on a continuous basis, which caused sales and cash receipts to vary negatively from the Initial Cash Flow Forecast. As a result, many of the Logistics Companies’ customers experienced lower fill rates than they required. These lower fill rates caused certain customers, including Cineplex Entertainment Limited Partnership, BCP IV Service Station Limited and Federated Co-operatives Limited, to terminate their relationship with the Logistics Companies.



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 to address the Applicants’ 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).
3. In addition to the above accommodations from CIBC, the Applicants 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 also facilitated certain transactions, including putting in place payment protection mechanisms so suppliers could supply on terms, as well as product delivery protections for customers who agreed to pay on an expedited basis.
4. Notwithstanding the foregoing efforts, 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 were a default under the Forbearance Agreement.
5. As a result of the various 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**”).

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.
7. Notwithstanding the defaults, CIBC (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. As a result of negotiations among the Applicants, 7-Eleven, CIBC and the Monitor, the Applicants, 7-Eleven, and CIBC entered into a cash collateral agreement dated August 10, 2023 (the “**Cash Collateral Agreement**”) to increase the Applicants’ availability under the CIBC Facility. Under the Cash Collateral Agreement, the parties agreed to the following key terms:
  - a) 7-Eleven would provide \$9 million (the “**Cash Collateral**”) to be held by CIBC;
  - b) upon receipt by CIBC of the Cash Collateral, CIBC would promptly (i) increase the borrowing base under the CIBC Facility by an amount equal to the Cash Collateral, and (ii) increase the borrowing base under the CIBC Facility by not less than \$2 million by<sup>1</sup>:
    - i. removing and revoking the \$1.5 million Excess Availability requirement under Section 4.1(k) of the Forbearance Agreement; and
    - ii. making certain borrowing base adjustments;

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<sup>1</sup> The additional availability made available to the Applicants as a result of the Cash Collateral Agreement did not require an increase in the amount of Lender Security Charge.

- c) 7-Eleven agreed to execute and deliver to and in favor of CIBC a Limited Recourse Guarantee, therein guaranteeing the obligations of Wallace & Carey under the CIBC Credit Agreement, as well as a Cash Collateral Agreement granting to CIBC a security interest in the Cash Collateral (collectively, the “**7-Eleven Security Documents**”);
  - d) the Applicants would schedule a Court hearing to approve a SISP;
  - e) as consideration for 7-Eleven providing the Cash Collateral, the Applicants agreed (i) to pay 7-Eleven a fully earned fee equal to \$1 million; and (ii) 7-Eleven would be granted the 7-Eleven SISP Rights (as defined and discussed Section 4.6 below), subject to Court approval; and
  - f) on a monthly basis, the Applicants agreed to pay 7-Eleven interest at the rate of 10% per annum, less any amounts received from CIBC on account of the Cash Collateral, until same has been returned to 7-Eleven in full.
9. On August 10, 2023, the Cash Collateral Agreement, 7-Eleven Security Documents and Second Forbearance Amendment were executed. In addition, 7-Eleven funded the Cash Collateral amount. Accordingly, the Applicants were provided approximately \$10 million of additional liquidity under the CIBC Facility (which amounts are secured under the Lender Priority Charge) for general working capital purposes, including to purchase inventory to improve customer fill rates.
10. In the context of the Second Forbearance Amendment and the additional funding provided by 7-Eleven, the Applicants prepared a revised cash flow forecast, which covers the period August 13 to December 2, 2023 (the “**First Revised Cash Flow Forecast**”). The Applicants are required to provide weekly reporting to CIBC. During the week ending August 25, 2023, the weekly reporting reflected that the Applicants had double counted certain receipts and disbursements but that the amounts largely offset one another; however, the Applicants were requested to provide an updated cash flow projection to December 2, 2023 to adjust for the double-counted items.

11. The Applicants' most recent cash flow forecast was finalized on September 13, 2023. It reflects that the Applicants are not projected to have sufficient liquidity under the CIBC Revolving Loan to fund all forecasted disbursements in the ordinary course, unless the Logistics Companies defer certain pre- and post-filing tobacco taxes (the "**Accrued Tobacco Taxes**") or they make significant reductions to their inventory purchases, which is likely to impair the viability of the Logistics Business. As of the date of this Report, the Accrued Tobacco Taxes owing by the Logistics Companies total approximately \$32 million. As the Applicants have been required to prepay most of their vendor obligations, and continue to do so, substantially all vendors appear to be current, and payroll, along with associated source deductions, are current.
12. The Logistics Companies are generally required to remit tobacco taxes in the month following their collection, with most of this amount payable on or around the 20<sup>th</sup> day of each month. Additionally, Wallace & Carey entered into a payment plan with the Province of Alberta to pay it \$2 million per week, of which \$250,000 is in respect of pre-filing tobacco taxes. Through the date of this Report, substantially all tobacco tax payments have been made in the ordinary course, subject to periodic deferrals. It is the Monitor's understanding that certain provincial tobacco tax legislation could give rise to liability for directors and officers for unpaid tobacco taxes.
13. In accordance with the ARIO, the Lender Priority Charge ranks in priority to the D&O Charge and the Tobacco Tax Charge (for clarity, the Tobacco Tax Charge also ranks behind all pre-filing obligations owing under the CIBC Credit Agreement, including outstanding obligations of approximately \$4.7 million in respect of the BCAP loan (as defined in the Pre-Filing Report)).
14. On September 18, 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 "**September 18<sup>th</sup> Notice**"). A copy of the September 18<sup>th</sup> Notice is attached hereto as **Appendix "D"**. In connection with the September 18<sup>th</sup> Notice, CIBC has advised the Monitor 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. For certainty, the Notice may be delivered by the Agent in its sole discretion. Revolving Loans made available until delivery of such Notice shall be made solely for the purposes set out in Borrowing Requests approved by the Agent and in accordance with a cash flow forecast acceptable to the Agent. During the two-business day period following delivery of the 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.”*

#### **4.0 Updated Cash Flow Forecast**

1. As of the date of this Report, the Applicants are in the process of finalizing an updated cash flow forecast for the period September 10, 2023 to December 2, 2023 (the “**Updated Cash Flow Forecast**”). As a potential solution to their liquidity challenges, the Logistics Companies are taking steps to reduce costs, sell slow moving inventory and discontinue underperforming portions of their businesses. The Logistics Companies also intend to have discussions with Tobacco Tax Authorities to negotiate a temporary deferral of the payment of certain of the Accrued Tobacco Taxes. The Monitor understands that the Applicants efforts in this respect are ongoing. The Monitor will file a further supplemental report as soon as these discussions are complete. An Updated Cash Flow Forecast is expected to be filed at that time as well.

#### **5.0 SISP**

1. The SISP was approved pursuant to the SISP Approval Order. The purpose of the SISP is to solicit interest in, and opportunities for, one or more or any combination of: (i) a restructuring, recapitalization or other form of reorganization of the business and affairs of the Applicants as a going concern; or (ii) a sale of all, or substantially all, of the Applicants’ business and operations (the “**Business**”) and/or the property (the “**Property**”) as a going concern or otherwise. The SISP process is being led by the Applicants with the assistance of its financial advisor, A&M, under the oversight of the Monitor. The Lender has various consultation and consent rights in the SISP.
2. Pursuant to the SISP, interested parties can submit offers to:
  - a) acquire all, substantially all or a portion of the Property or the Business;
  - b) make an investment in, restructure, reorganize or refinance the Business;

- c) carry out any combination of a Sale Proposal and an Investment Proposal; or
  - d) form a partnership with the Applicants, or any of them, by way of joint-venture or otherwise.
3. Given the important relationship between 7-Eleven and the Applicants, and the Cash Collateral arrangement pursuant to which 7-Eleven provided \$9 million of liquidity to the Applicants, 7-Eleven was provided certain rights in the SISP, including the right to submit a stalking horse bid. As of the date of this Fourth Report, 7-Eleven has not exercised that right. A complete discussion of the rights afforded to 7-Eleven in the SISP is provided in the Third Report.
4. The following table provides a summary of key process milestones and dates under the SISP. The SISP has been designed as a two-step process, with letters of intent to be submitted by the Phase 1 Bid Deadline and binding agreements to be submitted at the Phase 2 Bid Deadline.

SISP Launch Date	August 30, 2023
Phase 1 Bid Deadline	October 5, 2023
Phase 2 Bid Deadline	November 2, 2023
Hearing of the Transaction Approval Application	Subject to the availability of the Court
Target Closing Date	On or before December 4, 2023

## 5.1 SISP Update

1. A&M is working diligently to advance the SISP. A summary of the status of the SISP as of the date of this Fourth Report is as follows:
- a) 189 parties have been contacted, including 152 financial parties and 37 strategic parties;
  - b) 35 financial parties and 10 strategic parties have executed a non-disclosure agreement (the “NDA”);
  - c) 3 parties are presently negotiating NDAs; and
  - d) 37 parties remain active in the process.

2. There is benefit in continuing the SISP, including providing employment for some or all of the Applicants' approximately 600 employees. The Applicants and A&M have made meaningful progress to-date and several parties have indicated an interest in the opportunity. The Logistics Companies are an important supplier to many of their customers. The Applicants' management is strongly of the view that with fresh capital and other operational improvements, there is an opportunity to restructure the businesses of the Logistics Companies so that they can be viable in the long-term.

## 6.0 Conclusion

1. Progress has been made in the SISP, which is advancing quickly. It may be possible to accelerate the timelines in that process, if necessary. The Monitor is of the view that the process should be given the opportunity to be completed provided satisfactory arrangements can be reached concerning the Logistics Companies' liquidity challenges.
2. The Applicants are taking steps to reduce costs and improve liquidity, including by discontinuing non-viable portions of the Logistics' Companies business, selling slow-moving inventory and non-core assets and cutting costs. As detailed herein, notwithstanding delivery of the September 18<sup>th</sup> Notice, CIBC has supported the Applicants' business throughout the proceedings with various accommodations, and 7-Eleven has supported the business through the Cash Collateral agreement and otherwise. The Applicants are considering various additional means to address their liquidity situation, including arrangements concerning the payment deferral of certain tobacco tax obligations.
3. The Monitor will file a further report with the Court as soon as a material update is available.

\* \* \*

All of which is respectfully submitted,



**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**

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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.



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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

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**

KSV Restructuring Inc.  
Suite 1165, 324 – 8<sup>th</sup> Avenue SW  
Calgary, Alberta  
T2P 2Z2

ENTERED

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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](https://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
<b>Net Cash Flow</b>	<b>11,285</b>	<b>5,463</b>	<b>5,822</b>

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 SISF 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 “C”**

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***

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

DOCUMENT                   **SUPPLEMENT TO THE SECOND REPORT OF THE**  
**MONITOR**  
**AUGUST 11, 2023**

ADDRESS FOR  
SERVICE AND  
CONTACT  
INFORMATION OF  
PARTY FILING THIS  
DOCUMENT                   **MONITOR**  
KSV Restructuring Inc.  
Suite 1165, 324 – 8<sup>th</sup> Avenue SW  
Calgary, Alberta  
T2P 2Z2

Attention:           Bobby Kofman / David Sieradzki / Jason Knight  
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## 1.0 Introduction

1. This report (the "**Supplemental Report**") supplements the Second Report.
2. Defined terms in this Supplemental Report have the meaning provided to them in the Second Report, unless otherwise defined herein. This Supplemental Report is subject to the restrictions and qualifications in the Second Report.

## 2.0 Purpose

1. The purpose of this Supplemental Report is to provide an update on the financing referenced in the Second Report and to advise of the next anticipated steps in these proceedings.

## 3.0 Update

1. On August 10, 2023, a second amendment to the Forbearance Agreement was entered into, which, among other things, provides the Applicants with enhanced availability in the amount of \$10 million under their existing financing arrangements, which the Applicants intend to use for general working capital purposes, including to purchase inventory to improve customer fill rates.
2. The Applicants intend to schedule a motion for the approval of a SISP and other related matters in the next few weeks, subject to Court availability.

\* \* \*

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 “D”**

September 18, 2023

**BY FACSIMILE & EMAIL**

**Carey Management Inc.  
5445 – 8<sup>th</sup> 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 26, 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 and a Second Amendment to Forbearance Agreement dated August 10, 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 will automatically terminate 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:

1. The Lenders and the Agent have not waived the Existing Terminating Events (or the Existing Defaults);
2. 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 or Swap Agreement, 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.

3. Without limiting the foregoing and without limiting any other Availability Reserves that have been or may be established, the Agent has determined in its Permitted Discretion to establish an additional Availability Reserve in the amount of \$2,500,000, and
4. 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.

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. For certainty, the Notice may be delivered by the Agent in its sole discretion. Revolving Loans made available until delivery of such Notice shall be made solely for the purposes set out in Borrowing Requests approved by the Agent and in accordance with a cash flow forecast acceptable to the Agent. During the two business day period following delivery of the 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.

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.

**[Signature Page Follows]**

Yours very truly,

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

Per:   
\_\_\_\_\_  
Name: Geoff Golding  
Title: Authorized Signatory

Per:   
\_\_\_\_\_  
Name: Steven Filippi  
Title: Authorized Signatory

Copy to:

**Miller Thomson LLP**

3000, 700 – 9<sup>th</sup> Avenue S.W.

Calgary, AB T2P 3V4

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

Facsimile: (403) 262-0007

Copy to:

**KSV Restructuring Inc., as Monitor of  
Carey Management Inc. et al.**

220 Bay Street, 13<sup>th</sup> Floor, PO Box 20

Toronto, Ontario, M5J 2W4

Attention: Bobby Kofman

## **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 weeks ended August 26, 2023, September 2, 2023 and September 9, 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 weeks ended August 26, 2023, September 2, 2023 and September 9, 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 5.4(a) of the Forbearance Agreement, 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 July 8, 2023 and August 5, 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 5.4(a) of the Forbearance Agreement, due to the Additional Default arising on or about August 22, 2023, August 30, 2023, and September 6, 2023 from the Credit Parties' withdrawal of funds from the Blocked Accounts in the amounts of \$747,000, \$1,500,000 and \$1,000,000, respectively, in violation of the provisions of the Credit Agreement and the Blocked Account Agreements.