



COURT FILE NUMBER 2301- 15147

COURT COURT OF KING’S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PROCEEDINGS IN THE MATTER OF THE RECEIVERSHIP OF 7716271
ALBERTA INC., SPRUCE IT UP LAND CORP. 230115147
MEADOWS PROPERTIES LTD.

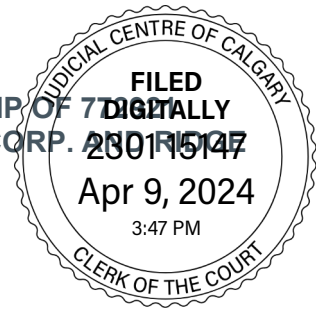
DOCUMENT FIRST REPORT OF THE RECEIVER
APRIL 8, 2024

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
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1.0 Introduction

1. Pursuant to an order of the Court of King's Bench of Alberta (the "**Court**") made on November 17, 2023 (the "**Receivership Order**"), in connection with proceedings initiated by 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 "**CCAA Companies**") under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") (the "**CCAA Proceedings**"), KSV Restructuring Inc. ("**KSV**") was appointed receiver (the "**Receiver**") of all of the assets, undertakings, and properties of:
 - a) 772921 Alberta Ltd. ("**772**"), which:
 - i. owned two warehouses¹, one in British Columbia and one in Alberta that continue to be used by Wallace & Carey in its business (the "**772 Owned Real Property**"); and
 - ii. leased two warehouses², one in British Columbia and one in Alberta, that also continue to be used by Wallace & Carey in its business (the "**772 Leased Real Property**");
 - b) Spruce It Up Land Corp. ("**SIU**"), which owns a commercial property located at 159 210 Avenue SW, Calgary, Alberta³ (the "**SIU Property**"); and
 - c) Ridge Meadows Properties Ltd. ("**Ridge Meadows**", and together with 772 and SIU, the "**Receivership Companies**"), which owns a residential property located at 255256 Range Road 25, NW, Calgary, Alberta⁴ (the "**Ridge Meadows Property**" and together with the 772 Owned Property and the SIU Property, the "**Receivership Properties**").

¹ The municipal addresses of these properties are 1230 Industrial Road, Kelowna, British Columbia and 5415 and 5445 8th Street N.E., Calgary Alberta.

² Having municipal addresses of 8th Street NE, Calgary, Alberta, and Unit 5B, 4386 Boban Drive, Nanaimo, British Columbia.

³ Legal Description: Plan 5235JK Block A Excepting Thereout All Mines and Minerals; Area: 8.4 Hectares (20.75 Acres) more or less.

⁴ Legal Description: Plan 8031JK Block A Lot 5 Excepting Thereout All Mines and Minerals; Area: 7.85 Hectares (19.4 Acres) more or less.

2. Pursuant to paragraph 27 of the Receivership Order, the Receivership Order became effective on November 21, 2023, the date on which KSV, in its capacity as the monitor (the “**Monitor**”) in the CCAA Proceedings, filed the Monitor’s Notice (as defined in the Receivership Order) with the Court. A copy of the Receivership Order is attached as **Appendix “A”**.
3. In addition to the Receivership Order, the Court granted a sale approval and vesting order dated November 17, 2023 (the “**772 Approval and Vesting Order**”) that approved the sale and assignment to 7-Eleven Canada, Inc. (the “**7-Eleven**”) of the 772 Owned Real Property and the 772 Leased Real Property (the “**772 Property Transaction**”) pursuant to an agreement of purchase and sale between 7-Eleven and the Receiver dated November 7, 2023 (the “**772 Property APS**”).
4. The Monitor’s Sixth Report dated November 8, 2023 (the “**Monitor’s 6th Report**”) recommended that the Court approve a transaction between the CCAA Companies and 7-Eleven that resulted in the continuation of Wallace & Carey’s business (the “**7-Eleven Transaction**”). The Monitor’s 6th Report also provided information concerning the Receivership Companies, including:
 - a) their background;
 - b) their secured creditors;
 - c) the 772 Property Transaction and the 772 Property APS; and
 - d) the Receiver’s intention to market the Ridge Meadows Property and SIU Property by retaining a real estate broker.

A copy of the Monitor’s 6th Report is attached as **Appendix “B”**.

1.1 Purposes of this Report

1. The purpose of this report (the “**Report**”) is to update the Court on the receivership proceedings and to provide information to the Court in support of the Receiver’s application for:
 - a) an approval and vesting order (the “**SIU AVO**”):
 - i. approving the agreement of purchase and sale dated March 14, 2024 (the “**SIU Property APS**”) between the Receiver and Spruce Lands Limited Partnership,

as assignee of Western Securities Limited (the “**Purchaser**”), and authorizing and directing the Receiver to complete the sale of the Purchased Assets (as defined in the SIU Property APS) contemplated therein (the “**SIU Property Transaction**”);

- ii. following the Receiver’s delivery of the Receiver’s certificate substantially in the form attached as Schedule “A” to the proposed SIU AVO, vesting SIU’s and the Receiver’s right, title, and interest in and to the Purchased Assets in the Purchaser free and clear of all claims and encumbrances; and

b) an order:

- i. sealing the Offer Summary (as defined below) and a confidential version of the SIU Property APS, attached as **Confidential Appendix “1”** and **“2”**, respectively, until the closing of the SIU Property Transaction or further order of the Court;
- ii. approving this Report and the Receiver’s activities as set out herein; and
- iii. approving the fees and disbursements of the Receiver and its legal counsel, Cassels Brock & Blackwell LLP (“**Cassels**”), as detailed herein.

1.2 Scope and Terms of Reference

1. In preparing this Report, the Receiver has relied upon the Companies’ unaudited financial information, books and records, information available in the public domain and discussions with management of CMI and Wallace & Carey.
2. The Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the financial information relied on to prepare this Report in a manner that complies with Canadian Auditing Standards (“**CAS**”) pursuant to the Chartered Professional Accountants of Canada Handbook and, accordingly, the Receiver 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 due diligence.
3. Capitalized terms not defined within this Report are defined in the Receivership Order and the Monitor’s 6th Report.

1.3 Currency

1. Unless otherwise noted, all currency references in this Report are in Canadian dollars.

1.4 Court Materials

1. Court materials filed in these proceedings are available on the Receiver's website at: www.ksvadvisory.com/experience/case/wallace-and-carey (the "Case Website").

2.0 Background

1. The Companies are Alberta Corporations. CMI holds the following ownership interests in the Companies:
 - a) 772 – 100%;
 - b) Ridge Meadows – 100%; and
 - c) SIU – 84.57%. The balance of SIU's equity is owned by 1145757 Alberta Ltd., which the Receiver understands is owned by Patrick Carey, the Chief Executive Officer of CMI and sole director of the CCAA Companies.
2. The Ridge Meadows Property and SIU Property are currently occupied by the following tenants:
 - a) **Ridge Meadows Property** – two arm's length tenants (the "**Ridge Meadows Tenants**") pursuant to a lease dated November 15, 2023 (the "**Ridge Meadows Lease**") between Ridge Meadows and the Ridge Meadows Tenants. KSV learned immediately following its appointment that Ridge Meadows (through, CMI) had recently leased the Ridge Meadows Property. The Ridge Meadows Tenants have advised the Receiver that they intend to vacate the Ridge Meadows Property in the next few weeks; and
 - b) **SIU Property** – Spruce It Up Garden Centre Inc. (the "**SIU Tenant**"), pursuant to a lease dated January 1, 2016 (the "**SIU Lease**") between SIU and the SIU Tenant. CMI has a 22.50% ownership interest in the SIU Tenant.

3. As at the date of the Receivership Order, Canadian Western Bank (“**CWB**”) and Canadian Imperial Bank of Commerce (“**CIBC**”) had the following security interests with respect to the Receivership Companies:
 - a) **CWB**:
 - i. first ranking mortgages on each of the Receivership Properties; and
 - ii. a second ranking general security interest in all present and after acquired personal property relating to and located on the Receivership Properties; and
 - b) **CIBC**:
 - i. a first ranking general security interest in all present and after acquired personal property of the Receivership Companies; and
 - ii. second ranking mortgages on the Receivership Properties.
4. As of the date of this Report:
 - a) all amounts owing to **CWB** have also been repaid through proceeds from the sale of the 772 Property Transaction; and
 - b) all amounts owing by the CCAA Companies to **CIBC** have been repaid from the 7-Eleven Transaction and the business and assets of the Logistics Companies.
5. None of the Receivership Companies has any employees or carries on active business operations.

3.0 Realtor Request for Proposal Process

1. On November 21, 2023, the Receiver distributed a request for proposal (“**RFP**”) via email to three experienced listing brokerage firms (each a “**Prospective Broker**” and collectively the “**Prospective Brokers**”) to market the SIU Property and Ridge Meadows Property for sale. The RFP requested that each Prospective Broker submit a proposal by December 1, 2023 outlining, among other things, their experience selling real estate in the relevant market, their marketing plan with timelines, indications of value, and their proposed commission.

2. Two Prospective Brokers submitted proposals to the Receiver. The Receiver selected:
 - a) Cushman & Wakefield ULC (“**C&W**”) to market the SIU Property; and
 - b) Re/Max House of Real Estate (the “**Re/Max**”) to market the Ridge Meadows Property.
3. On December 13, 2023, the Receiver entered into an Exclusive Seller Representative Agreement with Re/Max. The Ridge Meadows Property is currently listed for \$3.5 million and remains available for sale.
4. On December 19, 2023, the Receiver entered into an Exclusive Seller Representative Agreement with C&W for the SIU Property (the “**SIU Listing Agreement**”), which contemplated that offers were to be submitted after a five and a half-week listing period (the “**SIU Property Sale Process**”).

4.0 SIU Property Sale Process

4.1 SIU Property Sale Process

1. C&W has provided the Receiver with a report concerning the SIU Property Sale Process, a copy of which is attached as **Appendix “C”**. A summary of the SIU Property Sale Process is as follows:
 - a) C&W carried out an email marketing campaign, which was sent to approximately 1,490 parties;
 - b) the Receiver prepared a non-disclosure agreement (an “**NDA**”). To participate in the SIU Property Sale Process, prospective purchasers were required to sign the NDA, following which they were provided access to a virtual data room (the “**Data Room**”) which it populated with the assistance of C&W;
 - c) C&W prepared a confidential information memorandum, which was prepared with the assistance of the Receiver, and distributed it to interested parties who had executed an NDA;
 - d) C&W also directly contacted parties that it believed would have a high degree of interest in the SIU Property;
 - e) interested parties were provided the opportunity to tour the SIU Property and to perform due diligence; and

- f) interested parties were required to submit binding offers (an “**Offer**”) by 5:00 p.m. (Calgary Time) on February 29, 2024 (the “**Offer Deadline**”).
2. 26 parties executed an NDA and were granted access to the Data Room resulting in the receipt of five offers by the Offer Deadline. In consultation with C&W, the Receiver determined that the Offer received from the Purchaser was the best available in the circumstances, based on its value, conditions, and timeline to close a transaction. A summary of each of the Offers received (the “**Offer Summary**”) is attached as **Confidential Appendix “1”**. The rationale for sealing the information in the Confidential Appendix is provided below.

4.2 SIU Property APS⁵

1. The following provides a summary of the SIU Property APS. A copy of the SIU Property APS, with the financial terms redacted, is attached as **Appendix “D”**. An unredacted copy of the SIU Property APS Agreement is attached as **Confidential Appendix “2”**.
- a) **Vendor:** the Receiver;
- b) **Purchaser:** Spruce Lands Limited Partnership, as assignee of Western Securities Limited;
- c) **Purchased Assets:** substantially all of SIU’s right, title, and interest in its property and assets including:
- i. the SIU Property;
 - ii. the SIU Lease;
 - iii. the Project Rights and Documents in the possession or subject to the control of the Receiver, but only to the extent transferable to the Purchaser or the Purchaser’s permitted assignees; and
 - iv. all of the building(s) and improvements erected on the SIU Property;

⁵ Capitalized terms in this section have the meaning provided to them in the SIU Property APS unless otherwise defined herein.

- d) **Excluded Assets:** all property and assets of SIU other than the Purchased Assets, and specifically:
 - i. all cash, cash equivalents, and accounts receivable of SIU, including any insurance refunds and GST refunds or other tax receivables; and
 - ii. the Excluded Contracts, described in Schedule E of the SIU Property APS;
 - e) **Excluded Liabilities:** all Liabilities, other than the assumed liabilities including, without limitation, any Encumbrances and any liability, obligation, or commitment associated with the Accounts Payable, Business, or any employees of SIU;
 - f) **Representation and Warranties:** consistent with the standard terms of an insolvency transaction, i.e. on an “as is, where is” basis with limited representations and warranties;
 - g) **Closing Date:** April 24, 2024;
 - h) **Termination:** the SIU Property APS Agreement can be terminated:
 - i. upon mutual written consent of the Vendor and the Purchaser (the “Parties”);
 - ii. if any conditions in favor of the Parties are not satisfied;
 - iii. if the SIU AVO is not issued by the Court on or before May 1, 2024, or such later date agreed to by the Parties;
 - iv. if closing has not taken place by the Closing Date, or such later date agreed to by the Parties;
 - v. automatically, should Closing have not occurred prior to the discharge of the Receiver, unless the Receiver’s interest in the SIU Property APS has been assigned prior to (or as part of) the Receiver’s discharge.
2. The Purchaser’s offer was conditional on a new lease with the SIU Tenant. The deadline for the Purchaser to waive its conditions was April 1, 2024. On April 1, 2024, the Purchaser provided a notice confirming that it was waiving its conditions and, accordingly, the transaction is now firm, subject to Court approval.

4.3 Approval of the SIU Transaction

1. The Receiver respectfully recommends that the Court issue an order approving the SIU Property APS and directing the Receiver to complete the SIU Property Transaction for the following reasons:
 - a) the SIU Property has been marketed for sale by C&W, a national brokerage with experience in the Calgary market;
 - b) C&W is of the view that the purchase price is the highest available in the circumstances, that the SIU Property was marketed for a commercially reasonable amount of time and that further time marketing the SIU Property is unlikely to result in a superior transaction;
 - c) C&W used conventional methods to market the SIU Property for sale, including preparing a CIM email blasts, direct solicitation of most likely purchasers, and site visits;
 - d) the SIU Property Sale Process was carried out under the supervision of the Receiver and in consultation with the Receiver;
 - e) the Receiver concurs with C&W's view in 4.3.1(b) above;
 - f) the Purchaser's Offer is unconditional, other than Court approval; and
 - g) in the Receiver's view, continuing to market the SIU Property provides no certainty that a higher purchase price will be achieved. Continuing the SIU Property Sale Process will result in continued costs, including insurance, property taxes, and professional fees.

4.4 Proposed Distribution of Transaction Proceeds

1. At this time, the Receiver is not seeking Court approval to distribute the proceeds from the SIU Property Transaction. The Receiver will make such a request at a future Court application. Based on SIU's books and records, as at the date of the Receivership Order, CMI, Wallace & Carey, and 772 were SIU's only creditors, with the exception of Canada Revenue Agency (the "**CRA**") for a nominal amount (less than \$3,000).

2. It is contemplated that the majority of the proceeds of sale, net of costs of realization, professional fees and taxes (if any), from the SIU Property will ultimately be made available to those Provinces and Territories that remain creditors of the CCAA Companies, as set out in greater detail in Section 6.0 of the Monitor's 6th Report.
3. The Receiver is considering whether there is any tax payable on the sale of the SIU Property, the most efficient manner in which to distribute the proceeds of the transaction from SIU to the CCAA Companies, and whether it will be necessary to run a claims process prior to making any distributions to the CCAA Companies.

4.5 Sealing

1. The Receiver recommends that **Confidential Appendices "1"** and **"2"** be filed with the Court on a confidential basis and remain sealed until the earlier of (i) the filing of Receiver's certificate(s); (ii) the discharge of the Receiver; or (iii) further Order of this Court, as the documents contain confidential information, including with respect to value. Making this information publicly available prior to closing could have a detrimental impact on value if a further sale process is required. Sealing **Confidential Appendices "1"** and **"2"** is necessary due to the risk that the public disclosure of the information contained in the same could cause irreparable prejudice to creditors and other stakeholders. The Receiver recommends that the sealing order terminate on closing of the transaction.
2. The salutary effects of sealing such information from the public record greatly outweigh the deleterious effects of doing so under the circumstances. The Receiver is not aware of any party that will be prejudiced if the information in **Confidential Appendices "1"** and **"2"** is sealed or any public interest that will be served if such details are disclosed in full. The Receiver is of the view that the sealing of the Confidential Appendices is consistent with the decision in *Sherman Estate v. Donovan*, 2021 SCC 25. Accordingly, the Receiver believes the proposed sealing of the Confidential Appendices is appropriate in the circumstances.

5.0 Other Activities of the Receiver

1. In addition to those discussed above, the Receiver has conducted the following activities in relation to its appointment.
 - a) corresponding with representatives of the Receivership Companies, CMI, and Wallace & Carey, to obtain information concerning the Receivership Companies;

- b) securing the Receivership Companies' bank accounts at CIBC and changing the account signatories to representatives of the Receiver;
- c) issuing the Receiver's Certificate pursuant to the 772 Approval and Vesting Order certifying completion of the 772 Property Transaction;
- d) corresponding with the Receivership Companies' insurance broker to determine whether insurance coverage was in place, premiums were current, and to add the Receiver as an additional insured and loss payee on the Ridge Meadows Property and SIU Property policies;
- e) safeguarding the Ridge Meadows Property, including:
 - i. attending the Ridge Meadows Property to understand and document the condition of the same;
 - ii. opening new utility accounts;
 - iii. arranging for snow removal services;
 - iv. arranging for the repair of certain items identified by the Ridge Meadows Tenants; and
 - v. securing certain assets situated on the Ridge Meadows Property;
- f) safeguarding the SIU Property, including:
 - i. attending the SIU Property to document the condition of the SIU Property; and
 - ii. confirming with the SIU Tenant its responsibilities under the lease;
- g) corresponding with the Ridge Meadows Tenants and SIU Tenant regarding the receivership proceedings, the terms of the leases, rent payable, and the sale processes for each respective property;
- h) investigating whether there are any environmental issues with respect to the SIU Property, including:
 - i. retaining Vertex Professional Services ("**Vertex**"), a third-party environmental consultant, to prepare a Phase 1 Environmental Assessment report (the "**Phase 1 Report**");

- ii. reviewing the Phase 1 Report prepared by Vertex which identified minor soil stains on the SIU Property;
 - iii. discussing the proposed environmental remediation plan, including soil surface scrapes; and
 - iv. addressing the issues identified in the Phase 1 Report. On February 28, 2024, Vertex confirmed that the environmental remediation was successful, and a Remediation Report formalizing same was issued by Vertex on March 7, 2024;
- i) engaging an auctioneer to perform an appraisal of certain equipment situated on the Ridge Meadows Property;
 - j) corresponding with CWB National Leasing regarding certain leased assets jointly leased by Ridge Meadows and the SIU Tenant and coordinating the assignment of the lease regarding same;
 - k) corresponding with MNP Ltd., the receiver of Plaza 1000 Ltd. (“**Plaza 1000**”), regarding office space at Plaza 1000 where 772 is the head tenant, which office space 772 subleased, and coordinating the assignment of same to the subtenants;
 - l) redirecting all the Receivership Companies’ mail to the Receiver’s office;
 - m) corresponding with the CRA with respect to tax accounts and remittances;
 - n) preparing the statutory reports required by subsections 245(1) and 246(1) of the BIA and mailing same to all known creditors of the Companies and the Official Receiver;
 - o) maintaining the Case Website, including posting documents, such as application materials, reports, orders, notices, etc.; and
 - p) preparing this Report.

6.0 Professional Fees

1. Pursuant to paragraph 18 of the Receivership Order, the Receiver and its counsel are to be paid their reasonable fees and disbursements at their standard rates and charges, incurred both before and after the making of the Receivership Order. Pursuant to paragraph 19 of the Receivership Order, the Receiver and its counsel shall pass their accounts from time to time.

2. The Receiver seeks to have its fees and disbursements, including those of its legal counsel, approved by the Court. The Receiver and its counsel have maintained detailed records of their professional time and costs for each of the Companies' estates.
3. The total fees for the Receiver from November 17, 2023 to March 31, 2024, were \$117,396.25, plus disbursements of \$4,045.08 and GST of \$6,072.06, for a total of \$127,513.39. The time spent by the Receiver is more particularly described in the Affidavit of Jason Knight to be sworn and filed in these proceedings.
4. The total fees of Cassels, as counsel to the Receiver, from November 21, 2023 to March 31, 2024, were \$31,881.65 and GST of \$1,593.05, for a total of \$33,474.70. The time spent by Cassels is more particularly described in the Affidavit of Natalie Thompson to be sworn and filed in these proceedings.
5. It is the Receiver's opinion that the fees and disbursements of the Receiver and Cassels accurately reflect the work done by the Receiver, and on behalf of the Receiver by Cassels, in connection with the receivership and the administration of the receivership for the dates of their respective invoices.
6. It is the Receiver's opinion that the fees and disbursements of Cassels are fair and reasonable and justified in the circumstances. The Receiver recommends approval of Cassels's accounts by this Court.

7.0 Conclusion and Recommendation

1. For the reasons set out in this Report, the Receiver is of the view that the relief requested is reasonable and appropriate in the circumstances and respectfully recommends that this Honourable Court issue the orders granting the Receiver's requested relief.

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

**KSV RESTRUCTURING INC.,
in its capacity as Receiver of 772921 Alberta Inc.,
Spruce it Up Land Corp, and Ridge Meadows Properties Ltd.
and not in its personal capacity**

APPENDIX A

[ATTACHED]

COURT FILE NUMBER 2301-15147
COURT COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
APPLICANT(S) CANADIAN IMPERIAL BANK OF COMMERCE
RESPONDENT(S) 772921 ALBERTA INC.; SPRUCE IT UP LAND
CORP. and RIDGE MEADOWS PROPERTIES
LTD.
DOCUMENT **RECEIVERSHIP ORDER**



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I hereby certify this to be a true copy of the original.


for Clerk of the Court

Lawyers for Canadian Imperial Bank of Commerce

DATE ON WHICH ORDER WAS PRONOUNCED: November 17, 2023
LOCATION OF HEARING: Edmonton
NAME OF JUSTICE WHO GRANTED THIS ORDER: The Honourable Justice Burns

UPON the application of Canadian Imperial Bank of Commerce (the "**Applicant**") in respect of 772921 Alberta Ltd., Spruce It Up Land Corp. and Ridge Meadows Properties Ltd. (collectively, the "**Debtors**"); AND UPON having read the Application, the Affidavit of Geoffrey Golding, sworn November 8, 2023, and the Affidavit of Service of Evan Cobb, dated November 10, 2023, filed; AND UPON reading the consent of KSV Restructuring Inc. to act as receiver (the "**Receiver**") of the Debtors, filed; AND UPON hearing counsel for the Applicant, the Debtors, Canadian Western Bank, and counsel for the proposed Receiver and any other counsel or other interested parties present;

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 deemed good and sufficient and this application is properly returnable today.

Appointment

2. Subject to paragraph 27 hereof and pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3 (the “**BIA**”), KSV Restructuring Inc. is hereby appointed Receiver, without security, of the Debtors’ right, title and interest in all of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (collectively, the “**Property**”).

Receiver’s Powers

3. The Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:
 - (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property, which shall include the Receiver’s ability to abandon, dispose of, or otherwise release any interest in the Property;
 - (b) to receive, preserve and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the engaging of independent security personnel, and the placement of such insurance coverage as may be necessary or desirable;
 - (c) to enter into any agreements or incur any obligations in the ordinary course of business;
 - (d) to engage consultants, appraisers, brokers, agents, experts, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver’s powers and duties, including without limitation those conferred by this Order;
 - (e) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors for use of the Property and to exercise all remedies of the Debtors in collecting such monies, including, without limitation, to enforce any security held by the Debtors;

- (f) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtors, for any purpose pursuant to this Order;
- (g) to undertake environmental assessments of the Property;
- (h) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Property, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding, and provided further that nothing in this Order shall authorize the Receiver to defend or settle the action in which this Order is made unless otherwise directed by this Court;
- (i) to market any or all the Property, including engaging brokers or agents on such terms as the Receiver in its discretion may deem appropriate to market the Property, advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (j) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business:
 - i. without the approval of this Court in respect of any transaction not exceeding \$500,000, provided that the aggregate consideration for all such transactions does not exceed \$750,000; and
 - ii. with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 60(8) of the *Personal Property Security Act*, RSA 2000, c. P-7 or any other similar legislation in any other province or territory shall not be required.

- (k) to apply for any vesting order or other orders (including, without limitation, confidentiality or sealing orders) necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (l) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate all matters relating to the Property and the receivership, and

to share information, subject to such terms as to confidentiality as the Receiver deems advisable;

- (m) to register a copy of this Order and any other orders in respect of the Property against title to any of the Property, and when submitted by the Receiver for registration this Order shall be immediately registered by the Registrar of Land Titles of Alberta, or any other similar government authority, notwithstanding Section 191 of the *Land Titles Act*, RSA 2000, c. L-4, or the provisions of any other similar legislation in any other province or territory, and notwithstanding that the appeal period in respect of this Order has not elapsed and the Registrar of Land Titles shall accept all Affidavits of Corporate Signing Authority submitted by the Receiver in its capacity as Receiver of the Property and not in its personal capacity;
- (n) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtors or any of them in respect of the Property; and
- (o) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations;

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons, including the Debtors, and without interference from any other Person (as defined below).

Duty to Provide Access and Co-operation to the Receiver

- 4. (i) The Debtors, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on their instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall grant immediate and continued access to the Property to the Receiver.
- 5. All Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtors, and any computer programs, computer tapes, computer disks or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which

may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or documents prepared in contemplation of litigation or due to statutory provisions prohibiting such disclosure.

6. If any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names, and account numbers that may be required to gain access to the information.

No Proceedings Against the Receiver

7. No proceeding or enforcement process in any court or tribunal (each, a **"Proceeding"**), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

No Proceedings Against the Debtors or the Property

8. No Proceeding against or in respect of the Debtors or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtors or the Property are hereby stayed and suspended pending further Order of this Court, provided, however, that nothing in this Order shall: (i) prevent any Person from commencing a proceeding regarding a claim that might otherwise become barred by statute or an existing agreement if such proceeding is not commenced before the expiration of the stay provided by this paragraph; and (ii) affect a Regulatory Body's investigation in respect of the debtor or an action, suit or proceeding that is taken in respect of the Debtors by or before the Regulatory Body, other than the enforcement of a payment order by the Regulatory Body or the Court. **"Regulatory Body"** means a person or body that has powers, duties or functions relating to the enforcement or administration of an Act of Parliament or of the legislature of a Province.

No Exercise of Rights of Remedies

9. All rights and remedies of any Person, whether judicial or extra-judicial, statutory or non-statutory (including, without limitation, set-off rights) against or in respect of the Debtors or the Receiver or

affecting the Property are hereby stayed and suspended and shall not be commenced, proceeded with or continued except with leave of this Court, provided, however, that nothing in this Order shall:

- (a) empower the Debtors to carry on any business that the Debtors are not lawfully entitled to carry on;
- (b) prevent the filing of any registration to preserve or perfect a security interest;
- (c) prevent the registration of a claim for lien; or
- (d) exempt the Debtors from compliance with statutory or regulatory provisions relating to health, safety or the environment.

10. Nothing in this Order shall prevent any party from taking an action against the Debtors 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 Receiver at the first available opportunity.

No Interference with the Receiver

11. 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 Debtors, except with the written consent of the Debtors and the Receiver, or leave of this Court.

Continuation of Services

12. 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 Debtors, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, services, utility or other services to the Debtors,

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 Debtors or exercising any other remedy provided under such agreements or arrangements. The Debtors 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 Debtors in accordance with the payment practices of the Debtors, or such other practices as may be agreed

upon by the supplier or service provider and each of the Debtors and the Receiver, or as may be ordered by this Court.

Receiver to Hold Funds

13. All funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the “**Post Receivership Accounts**”) and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further order of this Court.

Employees

14. Subject to employees’ rights to terminate their employment, all employees of the Debtors (if any) shall remain the employees of the Debtors. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*, SC 2005, c.47 (“**WEPPA**”).
15. Pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, SC 2000, c. 5, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a “**Sale**”). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

Limitations on Environmental Liabilities

16. (a) Notwithstanding anything in any federal or provincial law, the Receiver is not personally liable in that position for any environmental condition that arose or environmental damage that occurred:
 - i. before the Receiver's appointment; or

- ii. after the Receiver's appointment unless it is established that the condition arose or the damage occurred as a result of the Receiver's gross negligence or wilful misconduct.
- (b) Nothing in sub-paragraph (a) exempts a Receiver from any duty to report or make disclosure imposed by a law referred to in that sub-paragraph.
- (c) Notwithstanding anything in any federal or provincial law, but subject to sub-paragraph (a) hereof, where an order is made which has the effect of requiring the Receiver to remedy any environmental condition or environmental damage affecting the Property, the Receiver is not personally liable for failure to comply with the order, and is not personally liable for any costs that are or would be incurred by any person in carrying out the terms of the order,
 - i. if, within such time as is specified in the order, within 10 days after the order is made if no time is so specified, within 10 days after the appointment of the Receiver, if the order is in effect when the Receiver is appointed, or during the period of the stay referred to in clause ii below, the Receiver:
 - A. complies with the order, or
 - B. on notice to the person who issued the order, abandons, disposes of or otherwise releases any interest in any real property affected by the condition or damage;
 - ii. during the period of a stay of the order granted, on application made within the time specified in the order referred to in clause (i) above, within 10 days after the order is made or within 10 days after the appointment of the Receiver, if the order is in effect when the Receiver is appointed, by:
 - A. the court or body having jurisdiction under the law pursuant to which the order was made to enable the Receiver to contest the order; or
 - B. the court having jurisdiction in bankruptcy for the purposes of assessing the economic viability of complying with the order; or
 - iii. if the Receiver had, before the order was made, abandoned or renounced or been divested of any interest in any real property affected by the condition or damage.

Limitation on the Receiver's Liability

17. Except for gross negligence or wilful misconduct, as a result of its appointment or carrying out the provisions of this Order the Receiver shall incur no liability or obligation that exceeds an amount for which it may obtain full indemnity from the Property. Nothing in this Order shall derogate from any limitation on liability or other protection afforded to the Receiver under any applicable law, including, without limitation, Section 14.06, 81.4(5) or 81.6(3) of the BIA.

Receiver's Accounts

18. The Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case, incurred at their standard rates and charges. The Receiver and counsel to the Receiver shall be entitled to the benefits of and are hereby granted a charge (the "**Receiver's Charge**") on the Property, which charge shall not exceed an aggregate amount of \$400,000, as security for their professional fees and disbursements incurred at the normal rates and charges of the Receiver and such counsel, both before and after the making of this Order in respect of these proceedings, and the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, deemed trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person but subject to section 14.06(7), 81.4(4) and 81.6(2) of the BIA.
19. The Receiver and its legal counsel shall pass their accounts from time to time.
20. Prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including the legal fees and disbursements, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

Funding of the Receivership

21. The Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$250,000 (or such greater amount as this Court may by further order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, deemed trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges set out in sections 14.06(7), 81.4(4) and 81.6(2) of the BIA.

22. Neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.
23. The Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.
24. The monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.
25. The Receiver shall be authorized to repay any amounts borrowed by way of Receiver's Certificates out of the Property or any proceeds, including any proceeds from the sale of any assets without further approval of this Court.

Allocation

26. Any interested party may apply to this Court on notice to any other party likely to be affected, for an order allocating the Receiver's Charge and Receiver's Borrowings Charge amongst the various assets comprising the Property.

Effective Date Notice

27. This Order shall become effective upon delivery by KSV Restructuring Inc., in its capacity as court-appointed Monitor in the proceedings under Court File No. 2301-08305 (the "**CCAA Proceedings**"), delivering to the Service List in these proceedings and in the CCAA Proceedings a notice that all conditions precedent set out in Article 7 of the Agreement of Purchase and Sale dated November 7, 2023 between the Receiver and 7-Eleven Canada, Inc. (the "**Sale Agreement**"), other than those set out in Section 7.1(a) and 7.1(b) of the Sale Agreement have been satisfied or waived by the required parties (the "**Monitor's Notice**"). If the Monitor's Notice has not been delivered on or before December 31, 2023, this Order will be deemed to be of no further effect.

General

28. The Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
29. Notwithstanding Rule 6.11 of the *Alberta Rules of Court*, unless otherwise ordered by this Court, the Receiver 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 Receiver's reports shall be filed by the Court Clerk notwithstanding that they do not include an original signature.

30. Nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.
31. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any foreign jurisdiction to give effect to this Order and to assist the Receiver and its 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 Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Receiver in any foreign proceeding, or to assist the Receiver and its agents in carrying out the terms of this Order.
32. The Receiver be at liberty and is 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 Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.
33. The Applicant shall have its costs of this application, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis, including legal costs on a solicitor-client full indemnity basis, to be paid by the Receiver from the proceeds of the Property with such priority and at such time as this Court may determine.
34. Any interested party may apply to this Court to vary or amend this Order on not less than 7 days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

Filing


35. The Receiver shall establish and maintain a website in respect of these proceedings at <https://www.ksvadvisory.com/experience/case/wallace-and-carey> (the "**Receiver's Website**") and shall post there as soon as practicable:
 - (a) all materials prescribed by statute or regulation to be made publicly available; and
 - (b) all applications, reports, affidavits, orders and other materials filed in these proceedings by or on behalf of the Receiver, or served upon it, except such materials as are confidential and the subject of a sealing order or pending application for a sealing order.
36. Service of this Order shall be deemed good and sufficient by:
 - (a) serving the same on:

- i. the persons listed on the service list created in these proceedings or otherwise served with notice of these proceedings;
- ii. any other person served with notice of the application for this Order;
- iii. any other parties attending or represented at the application for this Order; and

(b) posting a copy of this Order on the Receiver's Website

and service on any other person is hereby dispensed with.

37. Service of this Order may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following transmission or delivery of this Order.
38. Notwithstanding that this Order may be digitally signed, the Clerk of the Court is hereby directed to accept this Order for in person same day filing and certification at the Court office located at the Edmonton Law Courts.



Justice of the Court of King's Bench of Alberta

SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that KSV Restructuring Inc, the receiver (the "**Receiver**") of the property of 772921 Alberta Ltd., Spruce It Up Land Corp. and Ridge Meadows Properties Ltd. appointed by Order of the Court of King's Bench of Alberta and Court of King's Bench of Alberta in Bankruptcy and Insolvency (collectively, the "Court") dated the 17th day of November, 2023 (the "**Order**") made in action numbers *Enter Action Numbers*, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of *Enter Amount*, being part of the total principal sum of *Enter Amount* that the Receiver is authorized to borrow under and pursuant to the Order.
2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded *Select an Option* after the date hereof at a notional rate per annum equal to the rate of *Enter Rate* per cent above the prime commercial lending rate of *Name of Institution* from time to time.
3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property (as defined in the Order), in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.
4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at *Enter Address*.
5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.
6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.
7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the _____ day of _____, 20____

KSV Restructuring Inc., solely in its capacity as
Receiver of the Property (as defined in the Order),
and not in its personal capacity

Per: _____

Name:

Title:

APPENDIX B

[ATTACHED]

COURT FILE NUMBER

2301 – 08305

COURT

2301- _____
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



LL

C110668

Nov 17, 2023
COM

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

CANADIAN IMPERIAL BANK OF COMMERCE v. 772921
ALBERTA INC.; SPRUCE IT UP LAND CORP. and RIDGE
MEADOWS PROPERTIES LTD.

DOCUMENT

SIXTH REPORT OF THE MONITOR AND
PRE-FILING REPORT OF THE PROPOSED RECEIVER
DATED NOVEMBER 8, 2023

ADDRESS FOR
SERVICE AND
CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT

MONITOR AND PROPOSED RECEIVER

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

Attention: Bobby Kofman / David Sieradzki / Jason Knight
Telephone: 416.932.6228 / 416.932.6030 / 587.287.2605
Facsimile: 416.932.6266
Email: bkofman@ksvadvisory.com /
dsieradzki@ksvadvisory.com /
jknight@ksvadvisory.com

MONITOR'S AND PROPOSED RECEIVER'S COUNSEL

Cassels Brock & Blackwell LLP
Bankers Hall West
Suite 3810, 3rd Street SW
Calgary, Alberta
T2P 5C5

Attention: Jeffrey Oliver / Jane Dietrich
Telephone: 403.351.2921 / 416.860.5223
Facsimile: 403.648.1151
Email: joliver@cassels.com / jdietrich@cassels.com

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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**”).
2. KSV is filing this report (the “**Report**”) as Monitor of the Applicants and as proposed receiver and manager of the property, assets and undertaking of:
 - a) 772921 Alberta Inc. (“**772**”), which:
 - i. owns two warehouses¹, one in British Columbia (the “**772 Owned BC Property**”) and one in Alberta (the “**772 Owned Alberta Property**”) that are used by Wallace & Carey in its business (jointly, the 772 Owned BC Property and the 772 Owned Alberta Property, the “**772 Owned Real Property**”); and
 - ii. leases two warehouses², one in British Columbia and one in Alberta, that are also used by Wallace & Carey in its business (the “**772 Leased Real Property**”); and
 - b) Ridge Meadows Properties Inc. (“**Ridge Meadows**”)³ and Spruce It Up Land Corp (“**SIU**”)^{4,5} each of which is subject to security interests in favour of Canadian Western Bank (“**CWB**”) and Canadian Imperial Bank of Commerce (“**CIBC**” or the “**Lender**”). (Collectively, the 772 Owned Real Property, the 772 Leased Real Property and the properties owned by 772, Ridge Meadows and SIU are referred to as the “**Non-Applicant Real Property**”.)

¹ The municipal addresses of these properties are 1230 Industrial Road, Kelowna, British Columbia and 5415 and 5445 8th Street N.E., Calgary Alberta.

² Having municipal addresses of 8th Street N.E., Calgary, Alberta, and Unit 5B, 4386 Boban Drive Nanaimo, British Columbia.

³ Having a municipal address of 255256 Range Road 25, NW Calgary, Alberta.

⁴ Having a municipal address of 159 210 Avenue SW, Calgary, Alberta.

⁵ The shares of Ridge Meadows and SIU are subject to the CCAA Charges (as defined in Section 2.1 below). CMI is believed to own 100% of Ridge Meadows and 84.57% of SIU.

1.1 Purposes of this Report

1. The purposes of this Report are to:

- a) provide background information concerning the Applicants and these proceedings;
- b) discuss the Sale and Investment Solicitation Process (“**SISP**”) carried out by Alvarez & Marsal Canada Securities ULC (“**A&M**”), as the Applicants’ financial advisor (the “**Financial Advisor**”), under the supervision of the Monitor;
- c) discuss a transaction (the “**Transaction**”) between the Applicants and 7-Eleven Canada, Inc. (“**7-Eleven**” or the “**Purchaser**”) that is intended to maximize recoveries to stakeholders, which includes:
 - i. pursuant to an agreement of purchase and sale dated November 7, 2023 (the “**W&C APA**”):
 - the purchase of certain of the Applicants’ personal property, information technology and intellectual property assets used in the Wallace & Carey business in British Columbia and Alberta (the “**Western Business**”);
 - the purchase of 7-Eleven designated inventory; and
 - the payment of accounts receivable owing by 7-Eleven to Wallace & Carey;
 - ii. the entering into of a Transition Services Agreement (“**TSA**”) upon closing of the Transaction among Wallace & Carey, CMI, the Purchaser and the Monitor that contemplates:
 - the businesses of the Logistics Companies continuing to operate following closing of the Transaction for the benefit of the Purchaser while the Applicants remain under CCAA protection;
 - the Purchaser funding substantially all of the Applicants’ operational and professional costs from and after the closing of the Transaction, including the fees and costs of the Monitor and its counsel, Cassels, Brock & Blackwell LLP (“**Cassels**”);

- an option granted to the Purchaser to acquire certain additional assets (the “**Optional Purchased Assets**”) used by the Logistics Companies that are not being acquired by 7-Eleven on closing of the Transaction, including certain assets located in provinces east of Alberta (the “**Eastern Business**”); and
 - the retention of most of the employees of Wallace & Carey⁶ during, at least, the term of the TSA, and potentially thereafter, as further detailed below;
- iii. releases (the “**Releases**”) granted in favour of certain persons, including the Applicants’ director and officers, as contemplated by the form of Approval and Vesting Order (the “**CCAA AVO**”);
 - iv. the appointment of KSV as receiver and manager of the property, assets and undertaking of 772, Ridge Meadows and SIU (if so appointed, the “**Receiver**”), pursuant to a receivership application brought by CIBC as secured creditor of each of 772, SIU and Ridge Meadows;
 - v. a sale by the Receiver to the Purchaser immediately following its appointment of the real property owned by 772, as set out in an agreement of purchase and sale between the Purchaser and the Receiver (the “**Receivership APS**”);
 - vi. an assignment pursuant to the Receivership APS by the Receiver to the Purchaser of the leases for 772 Leased Real Property; and
 - vii. a marketing process for the Non-Applicant Real Properties owned by Ridge Meadows and SIU;
- d) recommend that the sale proceeds from the Transaction, as well as the proceeds from the Optional Purchased Assets, certain assets excluded from the transaction (the “**Excluded Assets**”) and the Non-Applicant Real Property (collectively, the “**Net Distributable Proceeds**”) be paid to stakeholders (including CIBC and CWB) in accordance with the priorities established by the ARIO and the Ancillary Order (each as defined below), and applicable law;

⁶ As of the date of this Report, all Loudon Bros. employees have been terminated.

- e) discuss the next steps in these proceedings; and
- f) provide the reasons in support of the Monitor's recommendation that the Court issue:
 - i. the CCAA AVO, among other things, approving the W&C APA, the TSA, the Releases and a distribution of the Net Distributable Proceeds of the assets subject to the CCAA Proceeding, as discussed herein;
 - ii. an order (the "**Receivership Order**") sought by CIBC appointing KSV as the Receiver and authorizing the Receiver to market the Non-Applicant Real Properties owned by Ridge Meadows and SIU through the retention of a real estate broker identified by the Receiver;
 - iii. an order (the "**Receivership AVO**") approving:
 - the Receivership APS, including the sale of the 772 Owned Real Property to the Purchaser, and the assignment of the 772 Leased Real Property to the Purchaser, in each case free and clear of encumbrances other than permitted encumbrances; and
 - authorizing a distribution of the Net Distributable Proceeds of the assets subject to the Receivership Proceeding, as discussed herein; and
 - iv. sealing **Confidential Appendix "1"** for the reasons provided in Section 7 of this Report until the earlier of the termination of these proceedings or Order of this Court.

1.2 Scope and Terms of Reference

1. In preparing this 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 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 any forward-looking financial information discussed herein has not been performed in accordance with the Chartered Professional Accountants of Canada Handbook. Forward-looking financial forecasts and information are based upon various assumptions. Actual results achieved may vary materially from the forecasted results. The Monitor expresses no opinion or other form of assurance on whether the Applicants' businesses will perform in accordance with their financial forecasts and projections.

1.3 Currency

1. All references to currency in this Report are to Canadian dollars.

2.0 Applicants' 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 the CCAA proceedings. These include 100% of the equity of 772 and Ridge Meadows, and 84.57% of the equity of SIU. CMI's corporate organizational chart is provided in **Appendix "A"**.
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. As part of their efforts to downsize their business during these proceedings, the Applicants decided to discontinue the Loudon Bros business. On November 3, 2023, the Court approved a sale of Loudon Bros' real property for gross proceeds of approximately \$1.4 million. The sale is scheduled to close on or before November 17, 2023, which will be the final significant step in the wind-down of the Loudon Bros business.
4. Wallace & Carey is continuing to carry on active business operations. 7-Eleven is by far the most significant customer of Wallace & Carey. It presently represents substantially all of Wallace & Carey's revenue.
5. As of the Filing Date, the Logistics Companies employed approximately 600 full-time and 50 part-time employees. Wallace & Carey presently has approximately 450 full-time employees. CMI has three employees, being 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, including 772, SIU and Ridge Meadows (the "**CIBC Facility**"). Pursuant to the terms of a Forbearance Agreement between the Applicants and CIBC dated June 22, 2023 (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 (as defined below).
7. Pursuant to the Forbearance Agreement, CIBC was also to be provided a mortgage on the Non-Applicant Real Property, which mortgage was to rank behind CWB's mortgage on the same real property. The agreed mortgages were executed on July 20, 2023 and registered on the Non-Applicant Real Property on September 12, 2023.
8. At this time, the Forbearance Agreement has terminated as a result of the occurrence of certain Terminating Events described therein; however, CIBC has continued to fund the business of the Applicants subject to the borrowing limits of the CIBC Credit Agreement (as defined in the Initial Order) primarily for the purpose of completing the Transaction. The Monitor also understands that certain amendments to the CIBC Credit Agreement concerning, *inter alia*, enhanced reporting required by CIBC are in the process of being documented.

2.1 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;
 - b) approved the Applicants' use of the centralized cash management system provided by CIBC 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 its counsel, 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 amended pursuant to the terms of 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**”);
 - iv. fourth, the Encumbrances existing as of the date of the Initial Order 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 (the “**CIBC Pre-Filing Security**”); and
 - v. fifth, 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 “**CCAA 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 the terms of the Forbearance Agreement and 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**”) (provided in **Appendix “B”**) which, among other things:
 - i. extended the stay of proceedings to and including September 20, 2023;
 - ii. increased the maximum amount of the CCAA 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. Pursuant to certain restructuring milestones in the Forbearance Agreement, the Applicants were required within 40 days of the Initial Order to deliver for acceptance by CIBC a pro forma business model and financial forecast for the restructured business of the Applicants following implementation of a proposed plan consistent with a plan term sheet (the "**Term Sheet Milestone**"). Pursuant to the terms of the first amendment to the Forbearance Agreement dated July 18, 2023, CIBC provided certain accommodations to the Applicants and the Applicants were required to, *inter alia*, retain a financial advisor for the purpose of the SISP. Subsequently, certain defaults arose under the Forbearance Agreement, as amended, including in respect of the Term Sheet Milestone, and on August 2, 2023, CIBC provided notice to the Applicants of the occurrence of certain Terminating Events (as defined in the Forbearance Agreement).
4. On August 9, 2023, the Monitor 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 financial and other challenges being faced by the Applicants and the efforts being taken at the time by the Applicants, the Monitor, CIBC and 7-Eleven 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 Applicants' efforts to address the issues resulting from the MAC.

5. On August 11, 2023, the Monitor filed a supplement to the Second Report (the “**Second Report Supplement**”). The Second Report Supplement provided stakeholders with a copy of the Second Forbearance Amendment between, among others, CIBC and the Applicants. 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 based on additional credit support provided by 7-Eleven to CIBC pursuant to a cash collateral agreement (the “**Cash Collateral Agreement**”). The Applicants advised that they expected that the additional capital would address their challenges and would lead to improved customer fill rates, and therefore financial performance. Copies of the Second Report and the Second Report Supplement are provided in **Appendices “C”** and “**D**”, respectively, without appendices.

6. 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 SISP and authorizing the Applicants, in consultation and co-operation with A&M, 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 Financial Advisor, pursuant to an agreement dated August 13, 2023 between the Applicants and A&M, and associated changes to the ARIO, including:
 - increasing the amount of the Administration Charge from \$750,000 to \$850,000 to include a work 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 a fee payable to A&M upon completion of a qualifying transaction (the “**Transaction Fee**”), which is only subordinate to the Administration Charge.

7. On September 18, 2023, CIBC delivered to the Applicants a notice that certain additional Terminating Events had occurred and that CIBC was reserving all rights in respect of such, but provided that CIBC would continue to advance funding to the Applicants, subject to the borrowing limits of the CIBC Credit Agreement, unless and until two days following the delivery by CIBC of notice to the Applicants and the Monitor of CIBC's intention to discontinue funding.
8. On September 19, 2023, the Monitor filed its Fourth Report to Court (the "**Fourth Report**") which advised of a further MAC, as reflected by the Applicants' cash flow projection finalized on September 13, 2023. The MAC arose because the Applicants were not projected to have sufficient liquidity under the CIBC Revolving Loan to fund all forecasted disbursements in the ordinary course, unless the Logistics Companies deferred the payment of certain pre-filing and post-filing tobacco taxes (the "**Accrued Tobacco Taxes**") or made significant reductions to their inventory purchases (which was anticipated to impair the viability of the Logistics Business).
9. On October 7, 2023, the Monitor filed its Supplemental Report to the Fourth Report (the "**Fourth Report Supplement**"), which provided:
 - a) a summary of the dialogue among the Applicants, the Monitor and representatives of certain Provinces concerning the Accrued Tobacco Taxes and the payment by the Applicants of such taxes going-forward;
 - b) a further revised cash flow projection;
 - c) an update in respect of certain additional financial support provided by 7-Eleven;
 - d) an update concerning a third amendment to the Forbearance Agreement (the "**Third Amendment**"), which was expected to be finalized in the week following the filing of the Fourth Report Supplement and in respect of which the Monitor advised it would file a further supplemental report once finalized (the "**Second Supplement to the Fourth Report**");
 - e) an update concerning the SISP; and
 - f) the Monitor's recommendation that these proceedings continue so that the Applicants could complete the SISP, which was being advanced on an expedited basis given the Applicants' ongoing liquidity challenges.

10. Copies of the Fourth Report and the Fourth Report Supplement are provided in **Appendices “E” and “F”**, respectively, without appendices.
11. As of the date of this Report, a Third Amendment has not been finalized; however, CIBC has continued to make its revolving loan facility available to the Applicants, subject to the borrowing limits of the CIBC Credit Agreement and the reliance on certain additional financial support provided by 7-Eleven, so that the Applicants could fund their normal course business operations and complete the SISP, including the Transaction.
12. On October 30, 2023, the Monitor served its Fifth Report to Court, which recommended a sale of the Loudon Bros real property located in Thunder Bay, Ontario. The Court approved that transaction on November 3, 2023 and the sale is expected to close by no later than November 17, 2023.
13. The Court materials filed in these proceedings, including this Report, are available on the Monitor’s case website at www.ksvadvisory.com/experience/case/wallace-and-carey.

3.0 SISP

3.1 Background

1. The Applicants were required to commence the SISP due to their ongoing liquidity challenges and the absence of an executable restructuring plan.
2. As a result of negotiations among the Applicants, 7-Eleven, CIBC and the Monitor, the Applicants, 7-Eleven, and CIBC entered into the Cash Collateral Agreement on August 10, 2023, which resulted in an increase in the Applicants’ availability under the CIBC Facility. Pursuant to the Cash Collateral Agreement, the parties thereto agreed to the following key terms, among others:
 - 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;

- c) 7-Eleven agreed to execute and deliver to and in favour 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 the 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, including the right to be a stalking horse purchaser in the SISP, as discussed further in paragraph 3.2.3 below; 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.
3. On August 10, 2023, the Cash Collateral Agreement, 7-Eleven Security Documents and Second Forbearance Amendment were executed and 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 intended to improve customer fill rates and to provide the Applicants the opportunity to advance the SISP.
4. Pursuant to the Cash Collateral Agreement, CIBC is not permitted to seek repayment of the amounts owing to it by the Applicants from the Cash Collateral until it has realized upon all of the tangible property of Wallace & Carey, CMI and the CMI subsidiaries over which CIBC holds security.
5. The guarantee by 7-Eleven was amended on or about October 6, 2023 to, among other things, increase the guarantee given by 7-Eleven to CIBC of the Applicants’ indebtedness from \$9 million to \$11.5 million. The guarantee by 7-Eleven was further amended on or about November 3, 2023 to among other things, increase the guarantee given by 7-Eleven to CIBC of the Applicants’ indebtedness from \$11.5 million to \$15 million.

3.2 SISP Overview⁷

1. Pursuant to the SISP, interested parties were provided the opportunity to 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.
2. The following table provides the key milestones and dates under the SISP Approval Order.

[REDACTED]	
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

3. The SISP was designed as a two-stage 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.
4. Notwithstanding that 7-Eleven was granted the right to submit a stalking horse bid pursuant to the SISP, 7-Eleven did not exercise that right.

3.3 SISP Summary

1. A&M conducted a comprehensive process to solicit interest in the SISP, by contacting 190 parties, including 12 lending institutions, 141 private equity firms and 37 strategic parties, of which:

⁷ Defined terms in this Section of the Report have the meaning provided to them in the SISP Approval Order, unless otherwise defined herein.

- a) 47 parties executed a non-disclosure agreement (the “**NDA**”) and were granted access to an electronic data room, including 32 private equity firms, ten strategic parties and five lenders; and
 - b) four parties submitted non-binding expressions of interest/letters of intent (each an “**EOI**”), including one strategic party, two private equity firms and one lender.
2. A&M has provided the Monitor with a report concerning its conduct of the SISP and its recommendation of the Transaction. A copy of A&M’s report is provided in **Appendix “G”**.
3. As a result of the Applicants’ significant liquidity challenges, which continued notwithstanding the Cash Collateral Agreement, the Applicants, A&M and the Monitor, with the consent of CIBC, believed it was necessary to expedite the SISP timelines.
4. Accordingly, A&M encouraged the parties most interested in the transaction opportunity to provide EOIs at the earliest possible opportunity, which EOIs were to include, among other things, an overview of the proposed transaction structure, an indication of value, any outstanding due diligence and an estimated timeline to complete a transaction. A&M engaged with each party participating in the SISP at that time to facilitate their due diligence, including organizing meetings between certain interested parties and representatives of 7-Eleven.
5. As noted, four parties submitted EOIs on or before October 5, 2023. Given the critical importance of the 7-Eleven relationship to the Wallace & Carey business, each of the parties that submitted an EOI required that a new service agreement be executed with 7-Eleven, with the exception of the prospective lender, which required an equity investment.
6. During September 2023, 7-Eleven expressed concerns to the Monitor about the Applicants’ eroding financial and operational performance, lack of liquidity, the ability of the interested parties performing due diligence in the SISP to meet their service needs, and the amount of time that would be required to negotiate a new service agreement with one or more of these parties. 7-Eleven, however, also advised that it was not prepared at that time to exercise its right to submit a stalking horse bid nor to make a definitive offer for the Applicants’ business as its due diligence was not yet complete.

7. Following the Fourth Report (i.e., the second MAC report), discussions among A&M, the Monitor and 7-Eleven advanced rapidly concerning a transaction based on the structure detailed in this Report. On September 27, 2023, 7-Eleven sent an email to the Monitor outlining the terms of a proposed transaction. Those terms were incorporated into a draft term sheet between the Applicants and 7-Eleven that formed the basis of the Transaction documents. As the term sheet was non-binding, the parties' focus shifted to the definitive documents rather than finalizing the term sheet.

4.0 The Transaction⁸

1. The following are the primary Transaction documents:

- a) the W&C APA;
- b) the TSA; and
- c) the Receivership APS.

Each document is summarized below.

2. The W&C APA sets out the terms pursuant to which:

- a) the Applicants will sell to the Purchaser certain personal property forming part of the Western Business;
- b) the Purchaser will pay for 7-Eleven designated inventory; and
- c) the Purchaser will pay for all validated accounts receivable it owes to Wallace & Carey.

3. The W&C APA attaches a form of the TSA which is to be executed by the parties at closing of the Transaction. The TSA sets out the terms on which (i) the Purchaser will be provided an option following closing to purchase certain remaining assets used in the operation of the Western Business and the Eastern Business, including a lease for a warehouse used by Wallace & Carey in Oakville, Ontario that is believed to have considerable value; and (ii)

⁸ Unless otherwise defined in this Report, defined terms have the meanings provided to them in the Transaction Documents.

Wallace & Carey will continue to operate for the benefit of the Purchaser under CCAA protection, including:

- a) the duration of the TSA, being 15 months and nine months for the Western Business and the Eastern Business, respectively, subject in each case to two 90-day extensions that are available to the Purchaser; and
 - b) the Purchaser shall fund from and after closing, substantially all of the Applicants' operational costs, including employee costs, real property and personal property leases and other contracts, as well as the fees and costs of the Monitor and its counsel, and certain fees of the Applicants' counsel.
4. The execution of the TSA by the parties thereto is a critical part of the Transaction. The purpose of the TSA is for Wallace & Carey and CMI to maintain in good standing for the benefit of the Purchaser certain real and personal property leases and other contracts until the Purchaser can determine its long-term intentions for those leases and contracts.
 5. Pursuant to the TSA, the majority of Wallace & Carey's employees as of the Closing Date will continue to be employed until (and if) they are hired by one or more service providers identified by the Purchaser, which may include 7-Eleven, or until their services are no longer required, at which time their employment will be terminated and all wages and vacation pay owing to them will be paid. Additionally, the Purchaser has agreed to encourage any new service provider or providers with which they contract to hire Wallace & Carey's employees.
 6. The Receivership APS sets out the terms pursuant to which KSV, if appointed as Receiver of 772, is to sell and transfer to the Purchaser, respectively, the 772 Owned Real Property and 772's interest in the 772 Leased Real Property. These properties were marketed as part of the SISP. Pursuant to the terms of the Receivership APS, the Purchaser shall purchase the 772 Owned Real Property for the purchase price of \$14.92 million. The purchase price for the 772 Owned Real Property was determined through (i) an arm's length process conducted by a commercial real estate agent for the 772 Owned BC Property, in which the Purchaser's offer was the highest offer; and (ii) an estimate of value based on an appraisal sourced by the Applicants that was updated by the Monitor to reflect the current market value for the 772 Owned Alberta Property.

7. Other notable provisions of the Transaction include:
- a) from and after the Closing Date, the Lender will have no further obligation to fund the Applicants' operating costs;
 - b) the key terms of the Transaction are consistent with the terms of a standard insolvency transaction, i.e., on an "as is, where is" basis, with limited representations and warranties from the Applicants or the Receiver, as the case may be;
 - c) the closing of the W&C APA and the Receivership APS are conditional on the closing of each other;
 - d) the CCAA AVO in respect of the W&C APA provides for the Releases (as discussed in Section 4.3 below);
 - e) the CCAA AVO provides for an assignment of the Assigned Contracts listed on Schedule "B" to the W&C APA to the Purchaser provided that amounts required to be paid pursuant to section 11.3(4) of the CCAA have been paid by the Purchaser. The Monitor understands that the Applicants and the Purchaser are attempting to reach out to counterparties of the Assigned Contracts to obtain their consent to assignment. However, given the timing of the expected closing of this transaction, it is likely not possible to do so for all Assigned Contracts. In this respect, the Monitor notes that the Purchaser has agreed under the W&C APA to assume the obligations under the Assigned Contracts. Based on information provided to the Monitor by the Purchaser, the Monitor also understands that 7-Eleven will be able to perform the obligations under the Assigned Contracts and that it would be appropriate to assign the rights and obligations to the Purchaser;
 - f) With respect to any real property lease assignments required under the Transaction, the Applicants' counsel has advised that each of the relevant landlords has indicated that it is prepared to consent to an assignment of the relevant lease. The Monitor understands that the Applicants' counsel intends to obtain these assignments in advance of closing; however, to the extent that the assignments are not provided prior to the hearing of the application, the Receivership AVO also provides for an assignment of the 772 Leased Real Property to the Purchaser;

- g) subject to Court approval, closing of the Transaction is contemplated to occur on November 20, 2023 (with an effective time of 12:01 a.m. on November 19, 2023) unless otherwise agreed by the parties and the Monitor. The Outside Date is November 30, 2023;
- h) the only material conditions precedent are Court approval of the Transaction pursuant to the CCAA AVO and the approval or non-objection of the Transaction by the Commissioner of Competition pursuant to the *Competition Act*, 1985, c. C-34, the latter of which is in process; and
- i) the Receiver also intends to market the Ridge Meadows and SIU real property for sale by retaining a real estate broker.

4.1 Estimated Transaction Value

1. The table below provides (i) an estimate of the value of the Transaction as of October 28, 2023 based on the Applicants' financial information available to the Monitor; and (ii) the indicative waterfall of distributions resulting therefrom pursuant to the ARIO and the Ancillary Order.

(\$000s) ⁹	Range	
	Low	High
Description		
W&C APA Transaction		
Accounts Receivable	10,000	12,600
Inventory	7,600	8,600
7-Eleven Inventory	27,100	27,100
Property, Plant & Equipment	4,000	5,000
Other Proceeds	6,200	8,000
Total proceeds from W&C APA Transaction	54,900	61,300
Receivership Transaction, net of CWB mortgage¹⁰	3,100	3,100
Loudon real property	1,300	1,300
Other	400	1,400
Total gross realizations	59,700	67,100

⁹ All amounts in the table have been rounded.

¹⁰ CWB's mortgage is expected to be repaid in full on closing from the sale of the 772 Owned Real Property.

Less:		
Holdbacks and adjustments ¹¹	(14,600)	(11,300)
Net proceeds of realization before the following	45,100	55,800
Lender Priority Charge	(31,800)	(31,800)
Surplus after Lender Priority Charge	13,300	24,000
D&O Charge ¹²	(4,000)	(4,000)
(Shortfall)/surplus after D&O Charge	9,300	20,000
CIBC Pre-Filing Security ¹³	(5,600)	(5,600)
(Shortfall)/surplus after CIBC debt	3,700	14,400
Tobacco Tax Charge	(24,800)	(24,800)
Shortfall on Tobacco Charge	(21,100)	(10,400)

4.2 Transaction Alternatives

1. For the following reasons, the Monitor is of the view that there is no viable better option to the Transaction:
 - a) A&M conducted the SISP in accordance with its terms, subject to encouraging parties to submit offers on an expedited basis;
 - b) the Transaction maximizes value for the Applicants' business and assets;
 - c) 7-Eleven has advised that it is not prepared to support any other transaction at this time. Given 7-Eleven's critical relationship to the Wallace & Carey business, its support is required for any going-concern solution;
 - d) absent the Transaction, the Applicants' business is likely to be liquidated; and
 - e) the value of the Transaction exceeds liquidation value for the Applicants' business and assets for the reasons listed below.

¹¹ Includes holdbacks for the Administration Charge, the Transaction Fee Charge, post-filing liabilities, vacation pay and various other amounts that are required to be paid.

¹² As discussed in paragraph 4.3.6 below, the Applicants' directors and officers are prepared to have this charge released if the Release contemplated by the Transaction is approved by the Court. This would make available \$4 million to stakeholders ranking subordinate to the D&O Charge.

¹³ Estimated, subject to adjustment for interest and expenses.

i. W&C APA transaction

- The purchase price of the personal property in the CCAA transaction exceeds the liquidation value of those assets based on valuations obtained by A&M. A&M and the Monitor engaged in extensive and protracted negotiation with 7-Eleven concerning the purchase price for these assets. The amount paid by 7-Eleven includes a premium above liquidation value reflecting their value-in-use for 7-Eleven.
- 7- Eleven has agreed to purchase, in most cases at cost, certain inventory that has been purchased on its behalf by Wallace & Carey. This represents a substantial portion of Wallace & Carey's inventory. Without this commitment from 7-Eleven, inventory realizations would be significantly impaired, and costs of realization would be materially higher. There would also be challenges conducting the liquidation of the inventory as the assistance of Wallace & Carey's employees would be required. This would require an expensive key employee retention plan given the large number of Wallace & Carey employees, which would further reduce recoveries.
- 7-Eleven has also agreed to pay in full its accounts receivable owing to Wallace & Carey. In a liquidation, Wallace & Carey may be unable to service 7-Eleven in the ordinary course, and there is a significant risk that 7-Eleven would setoff any damages against accounts receivable it owes to Wallace & Carey.
- The method for determining the purchase price for the Oakville lease, which is an Optional Purchased Asset that is believed to have considerable value, was established under the terms of the TSA. The Monitor believes that the methodology is fair and commercially reasonable and is consistent with how such value is commonly calculated.

ii. Receivership transaction

- The purchase price for each 772 Owned Real Property is based on either updated value estimates for those properties obtained by the Monitor earlier in these proceedings, and/or on offers received for these properties in these proceedings. The purchase price also excludes carrying costs (such as property taxes and utilities) that would otherwise be incurred while marketing the properties, and the realtor commissions payable are less than a typical transaction.¹⁴ The sale of the properties in the Transaction also eliminates the risk that these properties may sell for a lower price than the purchase price under the Transaction.

iii. Additionally, the Transaction:

- mitigates the risks and costs of a liquidation, including the challenges retaining employees to assist with the liquidation process and the related payroll and operating costs, which would total millions of dollars; and
- minimizes the fees and costs of the Monitor, its counsel and the Applicants' counsel carrying out a liquidation, which would also be very significant.

4.3 Releases

1. The CCAA AVO provides for the Releases, which include a broad release of all claims against (a) the current and former directors, officers, employees and their legal counsel; (b) legal counsel, agents and advisors of the Applicants and the Purchaser; (c) the Monitor and its legal counsel (collectively, the "**Released Parties**").
2. The proposed Releases do not release: (i) any claim that is not permitted to be released pursuant to section 5.1(2) of the CCAA, or (ii) any fraud, gross negligence or willful misconduct on the part of any Released Parties.
3. The W&C APA provides that the closing of the Transaction will not be conditional upon the granting of the provisions of the CCAA AVO in a form that contains the Releases.

¹⁴ Typically, 5% of the selling price. In this case, commissions total approximately \$180k, or slightly more than 1%.

4. The Monitor notes that certain of the statutes under which the Accrued Tobacco Taxes are legislated contain provisions for director and/or officer liability that would be captured by the Releases contained in the CCAA AVO. The amounts are also secured by the Tobacco Tax Charge. Potential recoveries under the Tobacco Tax Charge are discussed herein and the Monitor understands that the applicable Provinces and Territories were served by the Applicants with their application materials on November 7, 2023 and will be served with this Report. The applicable Provinces and Territories have also been served with all materials filed in these proceedings, including the application materials containing the Initial Order, the ARIO and the Ancillary Order, each of which addresses the priority of the Tobacco Tax Charge and the other CCAA Charges.
5. In the Monitor's view, the Released Parties have provided substantial assistance (and will continue to do so) facilitating the proposed Transaction, which, if approved and closed, will ultimately see the value of the Applicants' business being maximized for the benefit of its stakeholders, including the beneficiaries of the Tobacco Tax Charge. In this regard, the Applicants' directors and officers have agreed, if requested, to continue in their role through this CCAA proceeding, which will provide the Purchaser with the benefit of their institutional knowledge of the Applicants' business and operations and will facilitate the orderly completion of these proceedings for the benefit of stakeholders.
6. Further, the Applicants' director and officers have agreed to have the D&O Charge released if the Release contemplated by the Transaction is approved by the Court. This would make the holdback of \$4 million otherwise contemplated to secure the D&O Charge unnecessary, meaning such funds would be available to stakeholders ranking subordinate to the D&O Charge. The release of this charge also negates the need for a claims process to determine any entitlement to such funds, resulting in significant associated cost savings.

5.0 Proposed Distributions

1. The ARIO and the Ancillary Order establish the following waterfall of distributions in the CCAA proceedings:
 - a) Administration Charge (\$850,000);

- b) Transaction Fee Charge (variable based on the value of the Transaction, but estimated to be approximately \$1 million);
 - c) the Lender Priority Charge (\$55 million);
 - d) D&O Charge (\$4 million);
 - e) the CIBC Pre-Filing Security (estimated to be \$5.5 million); and
 - f) Tobacco Tax Charge to \$25 million.
2. Pursuant to the Forbearance Agreement, CIBC was provided mortgages on the Non-Applicant Real Property ranking subordinate to CWB. As of the date of this Report, the amount owing to CWB is estimated to be approximately \$12 million. CWB is to be repaid, in full, from the sale of the Non-Applicant Real Property owned by 772.
 3. Subject to maintaining a holdback for the Administration Charge and other pre-closing costs that need to be funded from the Transaction proceeds, the Applicants are requesting an Order of the Court providing that the Net Distribution Proceeds are to be distributed to secured creditors in accordance with paragraph 1 and 2 above.
 4. In advance of these proceedings, and in order for the Monitor to recommend that the Court approve the Lender Priority Charge, the Monitor's counsel, Cassels, provided an opinion on the validity and enforceability of CIBC's security. Cassels' opinion provides that, subject to the customary assumptions and qualifications contained therein, the security granted to CIBC is valid and enforceable. Cassels has also provided the Monitor with an opinion confirming the validity and enforceability of CWB's security, subject to the customary assumptions and qualifications contained therein. A copy of the security opinions can be made available to the Court upon request.
 5. The Monitor is not aware of any secured creditors or any claim (including any deemed trust) that ranks or may rank in priority to the Lender Priority Charge or the CIBC Pre-Filing Security, other than the amounts secured under the Administration Charge, the Ancillary Order, and CWB in respect of the Non-Applicant Real Property (excluding the 772 Leased Real Property). Any equipment lessors with security interests in certain leased assets will either be assumed or paid by the Purchasers pursuant to the terms of the Transaction or their assets will be returned to the lessor.

6. The CCAA AVO provides that these distributions will be made free and clear of any claims and encumbrances. The Monitor notes that provincial legislation regarding tobacco taxes establishes a deemed trust in favour of tobacco tax authorities; however, that deemed trust is not operative pursuant to Section 37 of the CCAA. The Monitor notes that the applicable provinces will be served with this Report, as has been the case with all relevant materials filed in these proceedings.
7. Based on the foregoing, the Monitor recommends that the Court issue an order or orders:
 - a) authorizing the Monitor to make distributions to CWB to repay it in full from the proceeds of the sale of the 772 Owned Real Property; and
 - b) subject to the Monitor retaining sufficient reserves to satisfy, among other things, employee wages and vacation pay, the Administration Charge and the D&O Charge (subject to Court approval of the Release), authorizing the Applicant to make certain distributions, to the extent funds are available, including under the Transaction Fee Charge, the Lender Priority Charge and the CIBC Prefiling Security.

6.0 Tobacco Tax Recoveries

1. A table comparing the amounts projected to be owed by the Applicants to the Provinces and Territories as of November 17, 2023¹⁵ to the amounts owing as of the date of the Filing Date is provided below.

(\$000s)	November 17 Projection	Filing Date	Change
British Columbia	3,638	4,281	(643)
Alberta ¹⁶	16,085	13,780	2,305
Saskatchewan	1,880	4,386	(2,506)
Manitoba	1,426	452	974
Ontario	639	1,342	(702)
Northwest Territories	279	340	(61)
Nunavut	-	344	(344)
Yukon	822	535	287
Total	24,769	25,459	(691)

¹⁵ The last business day before closing.

¹⁶ The Monitor understands that the Province of Alberta's records may reflect a lower amount owing as of the Filing Date. The Monitor believes this amount would be approximately \$7.3 million. This is because the Province of Alberta's records would be based on the tobacco tax obligation as of the end of May 2023 and not as of the Filing Date.

2. As is evidenced by the table above, on a net basis, the tobacco taxes projected to be owing by the Applicants as of November 17, 2023 approximate the tobacco taxes owing as of the date of the Initial Order. The table reflects that the amounts owing to certain Provinces and Territories are projected to decline while the amounts owing to others are projected to increase, with Alberta seeing the greatest increase. This is largely because as of the Filing Date, Alberta and the Applicants had agreed to a payment plan in respect of tobacco tax arrears owing at the time, which the Applicants were unable to maintain during the CCAA proceedings. As noted in the Fourth Report Supplement, on October 1, 2023, Alberta withdrew Wallace & Carey's status as a tax collector such that Wallace & Carey is required to pay tobacco taxes at the time of purchase versus at the time of sale, which was the case until that time.
3. Based on the analyses performed by the Monitor, as discussed in Section 4.2 above, the projected repayments to the Provinces and Territories resulting from the Transaction materially exceed the amounts that the Provinces and Territories would receive if the business and assets of the Applicants were liquidated.
4. During the TSA period, Wallace & Carey intends to continue to pay tobacco taxes in the ordinary course.

7.0 Sealing

1. The Applicants are also seeking a Sealing Order, sealing on the Court file the Confidential Appendix to this Report, which contains a summary of bids received during the SISP. The availability of this information to other parties may negatively impact any future sale process if the Transaction does not close, or with respect to other elements of the Applicants' business that may be sold in the future. In the Monitor's view, sealing this information until the earlier of the termination of these proceedings or further Order of this Court is necessary to maximize recoveries in these proceedings and to maintain the integrity and confidentiality of key information in the SISP. The salutary effects of sealing such information from the public record greatly outweigh any deleterious effects of doing so. The Monitor is of the view that the Sealing Order is appropriate in the circumstances, satisfies the test from *Sherman Estate v. Donovan* 2021 SCC 25, and that no stakeholders will be prejudiced if the information is sealed.

8.0 Recommendation

1. The Monitor recommends that the Court issue the CCAA AVO, the Receivership Order and the Receivership AVO for the following reasons:
 - a) A&M carried out the SISP in accordance with its terms;
 - b) A&M widely canvassed the market for potential purchasers. Any purchaser of the Wallace & Carey business would have required a new “service agreement” with 7-Eleven. Among other reasons, the Applicants’ declining liquidity did not provide 7-Eleven with sufficient time to negotiate a service agreement with a new distributor;
 - c) the value of the Transaction exceeds liquidation value. The Transaction has been extensively negotiated. The Monitor believes that the Transaction is, by far, the best outcome for the business and its stakeholders in the circumstances, and is intended to maximize value. The Monitor does not believe there is any viable transaction alternative available to the Applicants;
 - d) the Applicants have had a series of liquidity challenges throughout these proceedings, which liquidity challenges are continuing. Accordingly, it is imperative that a transaction be completed forthwith. Liquidation is a probability if the Transaction is not approved by the Court;
 - e) the Forbearance Agreement has been terminated. Absent completion of the Transaction, it is unlikely that CIBC will continue to fund the going concern operations of Wallace & Carey’s business;
 - f) The Monitor does not believe that the Provinces and Territories would have a superior outcome to the Transaction if it is not approved. Wallace & Carey intends to continue to remit to the Provinces and Territories all tobacco taxes accruing from the date of closing and following;
 - g) the transaction will see the Wallace & Carey business continue during the transition periods, at a minimum. The Purchaser has undertaken to encourage a future service provider (or providers) to offer employment to Wallace & Carey employees. The Purchaser is also considering long-term self-distribution, which would also provide employees with opportunities for long-term employment; and

- h) the continuation of the business will provide Wallace & Carey's vendors with an opportunity to continue their relationship with 7-Eleven, which is critically important to many of them.

* * *

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

[ATTACHED]

April 5, 2024

KSV Restructuring Inc.
1165, 324 –8 Avenue SW
Calgary, Alberta T2P 2Z2
Attention: Jason Knight

MEMO

RE: MARKETING EFFORTS FOR 159 –210 AVENUE SW, CALGARY, ALBERTA

Cushman & Wakefield ULC (“C&W”) is pleased to provide this summary of our marketing process for the property located at 159 – 210 Avenue SW, Calgary, Alberta (the “Property”).

LISTING & MARKETING

The Property was officially listed with C&W on December 19, 2023, and we commenced our marketing campaign on January 18th, 2024. Our comprehensive marketing strategy included distributing a teaser brochure via email to approximately 290 commercial real estate agents and over 1,200 targeted prospects, comprising of developers, investors, and local market users. This approach facilitated a good amount of time for a thorough discussion of the site’s strengths and challenges. Notably, challenges such as topography, land use restrictions, and uncertainties regarding connecting to City services were primarily identified. Moreover, complications arose from lease obligations with the existing tenant, adding further complexity to any potential transaction.

OFFER PROCESS

Although no official listing price was established, initial price guidance ranged between \$4.46MM to \$5.20MM. A data room was set up to provide interested parties with detailed Property information including a Confidential Information Memorandum (“CIM”), and a signed Confidentiality Agreement (“CA”) was required for access.

The submission deadline for all Offers was set for February 29th, 2024. A total of 26 CAs and 5 Offers were received by the deadline. There was a significant amount of interest from neighboring property owners, local developers, and experienced real estate investors, including users looking to occupy the site for specific operations. Offering price varied from \$1.6MM to \$4.5MM, with a variety of different conditions associated.

The parties who signed the CA included:

- Karp Sunbelt Properties
- Eyal Levy
- Brad Remington Homes
- Azimuth Builders
- NAI Advent
- Roxeth Group
- Vansea Holdings
- Cidex Group
- Spruce It UP
- Taurus Property Group
- Alliston Group
- Baycor Capital Inc.
- Cresa Alberta
- Brad Kroeker
- Gil Developments
- Skripbot Group
- Barclay Street Real Estate
- Manchester Properties
- 2455035 Alberta Ltd.
- Bennet Edwardson
- General Land and Power
- Storewest
- Intercontinental Syndications Inc.
- Brazilian Experience
- Clearview Commercial Realty
- Blue Grass Ltd.



**CUSHMAN &
WAKEFIELD**

SELECTION & CLOSING

After a thorough review of the offers with KSV Restructuring Inc., it was determined to work with the proposal from Western Securities Limited. Improvements were made to the suggested price and timeline of their original proposal. Headquartered in Calgary, Alberta, Western Securities is a private, fully-integrated real estate holding, property management, and development company with a diversified portfolio encompassing farm and ranch lands, single and multi-family homes, hotels, commercial properties, and more.

The Agreement of Purchase and Sale between Western Securities Limited and KSV Restructuring Inc. was finalized on March 14, 2024, with Purchaser Conditions waived on April 1, 2024. Through the process, Western Securities Limited established a special purpose entity to hold and operate the Property, subsequently assigning the Agreement of Purchase and Sale on March 28, 2024 to Spruce Lands LP, managed by Spruce Lands GP Ltd. Given the Property's challenges and lease obligations, we believe this was the optimal Offer achievable. In our opinion, the competitive bid process and timeline facilitated the best value put forward for the Property and it is improbable that further marketing efforts would yield a superior Offer.

Please don't hesitate to reach out should you require additional information or clarification regarding this summary.

Thank you,

CUSHMAN & WAKEFIELD ULC

Brent Johannesen
Vice President
Industrial Sales & Leasing
403 261 1116

Attachments:

- *a copy of the email with teaser brochure*
- *a copy of the CIM*

159 - 210 AVENUE SW

CALGARY, ALBERTA

FUTURE DEVELOPMENT SITE WITH EXISTING INCOME



The Opportunity

Introducing an exceptional property listing in the vibrant Southwest Calgary area, this prime real estate boasts unparalleled exposure and provides maximum visibility to Macleod Trail. The property comes with the added advantage of an existing income stream, thanks to a long-term tenant and a thriving garden center business currently in operation. Beyond its immediate income potential, the property also holds promising longer-term development possibilities, making it a strategic investment for those with a forward-thinking vision.

For potential buyers eager to explore this lucrative opportunity, a bid process has been established, culminating in a date for submissions set for **February 29, 2024**.

To maintain the confidentiality of sensitive information and to provide interested parties with comprehensive details, a confidentiality agreement is required. Don't miss the chance to be part of a lucrative investment in Southwest Calgary's thriving real estate landscape.

Property Details

Legal Description	Plan 5235JK, Block A
Total Site Size	± 20.75 acres
Total Improvements	± 25,098 sf
# of Structures	Fifteen (15)
Zoning	S-FUD
Tenant	Spruce It Up Garden Centre Inc.



**VIEW TEASER
BROCHURE**



**CONFIDENTIALITY
AGREEMENT**



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Join the conversation online



www.cushmanwakefield.com

159 - 210 AVENUE SW

CALGARY, ALBERTA

FUTURE DEVELOPMENT SITE WITH EXISTING INCOME | 20.75 ACRES



CONFIDENTIAL INFORMATION MEMORANDUM

CONTENTS

Executive Summary	1
Property Overview	2
Location Overview	3
Offering Process	4

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MEMORANDUM DISCLOSURE

Cushman & Wakefield ULC (“C&W”) has been engaged to act as the advisor and exclusive agent in connection with the sale of the real property located at 159 - 210 Avenue SW in Calgary, Alberta (legally described as: Plan 8031JK; Block A; Lot 5) (the “Subject Property”).

Cushman & Wakefield ULC. All rights reserved. The information contained in this Confidentiality Information Memorandum (“CIM”) is strictly confidential. This information has been obtained from sources believed to be reliable but has not been verified. No warranty or representation, express or implied, is made as to the condition of the property (or properties) referenced herein or as to the accuracy or completeness of the information contained herein, and same is submitted subject to errors, omissions, change of price, rental or other conditions, withdrawal without notice, and to any special listing conditions imposed by the property owner(s). Any projections, opinions, or estimates are subject to uncertainty and do not signify current or future property performance.



EXECUTIVE SUMMARY

C&W is pleased to present the opportunity to purchase a fee simple interest in a 20.75-acre development site located on the high-traffic corner of Macleod Trail and 210th Avenue SW. The Subject Property includes a freestanding single-tenant, two storey retail building built in 2000 as well as several ancillary buildings on site. The Subject Property is irregular in shape with approximately 973 feet (or 296 meters) on northeast frontage onto Macleod Trail SE. The property is currently zoned S-FUD (Special Purpose – Future Urban Development) and follows development guidelines listed in the West Macleod Area Structure Plan as further outlined in this document.

The Subject Property is currently leased to Spruce It Up Garden Centre Inc. (the “Tenant”) who has occupied the Subject Property since 2005. The Lease was recently amended to represent a higher net operating income as Basic Rent is currently \$387,910.80 per annum. The Tenant may extend the Term of the Lease on 2 successive occasions each for a period of 5 years in accordance with the provisions outlined in the Lease.

SUBMISSION DEADLINE

4:00 PM MST on Thursday, February 29, 2024

INVESTMENT HIGHLIGHTS



Location

With high exposure and rare accessibility indirectly off Macleod Trail, this site sits at the entrance point of the West Macleod Area Structure Plan.



Long Term Income

Gives potential income from the site for up to 10 years.



Supply & Demand

As Calgary’s market continues to strengthen, the rarity of development sites within the City of Calgary limits become more and more scarce.



Development Potential

The Subject Property is located within the West Macleod Area Structure Plan and includes plans for the eventual development of a variety of commercial and office uses to service the local and regional markets.

PROPERTY OVERVIEW

LEGAL DESCRIPTION	Plan 5235JK, Block A
TOTAL SITE SIZE	±20.75 acres
TOTAL IMPROVEMENTS	±25,098 sf
# OF STRUCTURES	Fifteen (15)
ZONING	S-FUD (Special Purpose - Future Urban Development)
SERVICES	Limited shallow services including natural gas, electricity, telephone, along with a water cistern on-site with septic system

LEASE DETAILS

TENANT	Spruce It Up Garden Centre Inc.
BASIC RENT	\$387,910 per annum

TOPOGRAPHY

The Subject Property exhibits a varied topography, with approximately 1/3 of the area being flat. The higher portion is located near Macleod Trail SE, while the land gradually declines towards a lower portion where Pine Creek flows through. The surrounding lands are characterized by dense natural vegetation, including trees, shrubs, and grass.

ACCESSIBILITY

The northern section of the Subject Property is accessed by a service road off 210th Avenue SW. The eastern section is formed by a Macleod Trail service access point. Both streets are improved with heavy gravel and open ditches with no sidewalks or streetlights currently in place. Vehicles can access the Subject Property at four (4) different points of egress/ingress.

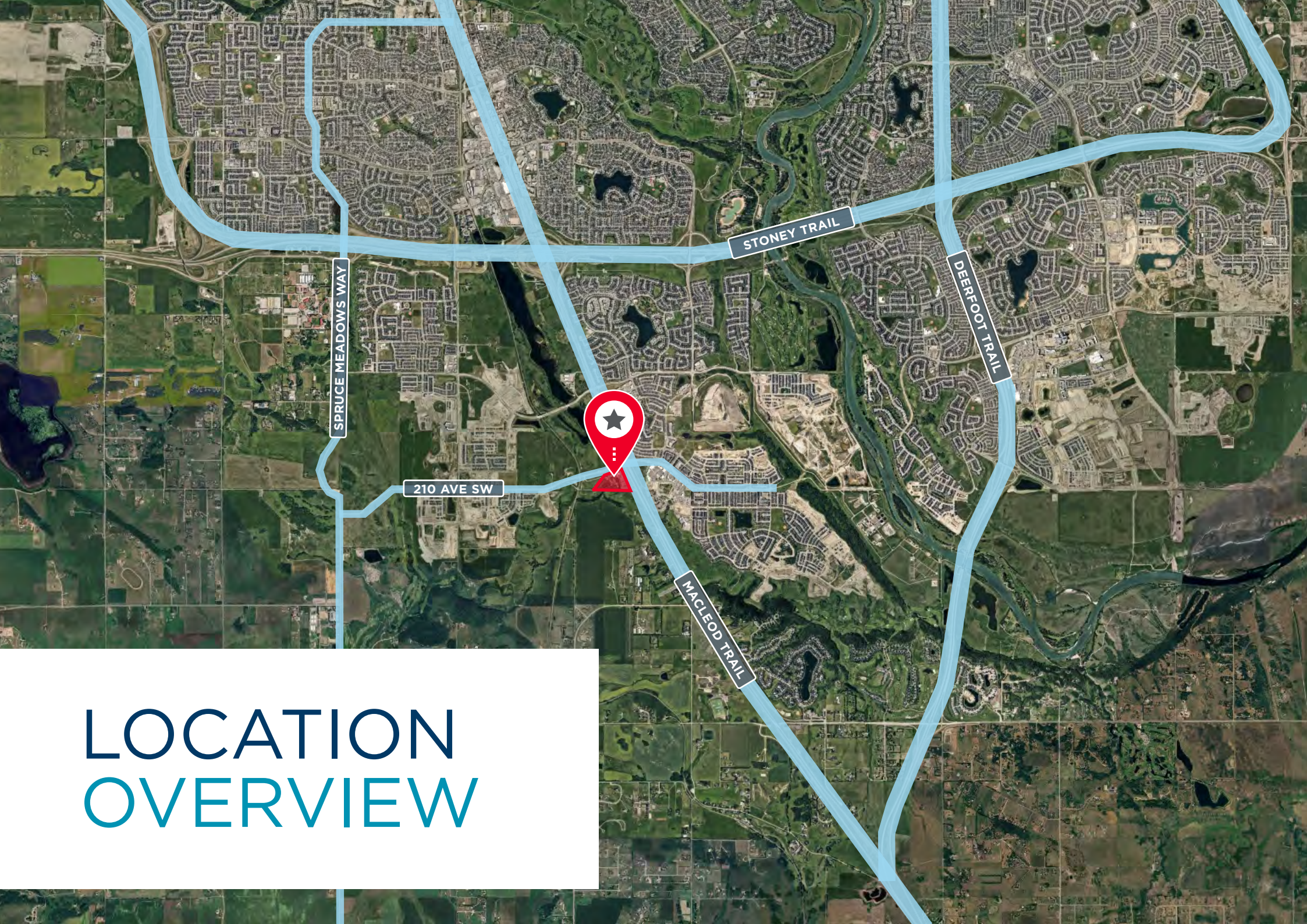
PROPERTY OVERVIEW

BREAKDOWN OF BUILDINGS

ITEM	APPROX. YEAR BUILT	APPROX. SIZE	CONSTRUCTION
Main Retail Building	2000	2,400 sf	Concrete Foundation / Wood Frame / Two Storey
Main Retail Building - 2nd Fl	2000	1,600 sf	Wood Frame
Greenhouse	2000	1,934 sf	Asphalt Foundation / Metal Frame / Polymer Roof
Cold Frame Structure 1	2010	2,000 sf	Asphalt Foundation / Metal Frame / Polymer Roof
Cold Frame Structure 2	2010	2,000 sf	Asphalt Foundation / Metal Frame / Polymer Roof
Cold Frame Structure 3	2010	2,000 sf	Asphalt Foundation / Metal Frame / Polymer Roof
Cold Frame Structure 4	2014	2,000 sf	Asphalt Foundation / Metal Frame / Polymer Roof
Cold Frame Structure 5	2014	2,340 sf	Asphalt Foundation / Metal Frame / Polymer Roof
Cold Frame Structure 6	2018	3,600 sf	Asphalt Foundation / Metal Frame / Polymer Roof
Storage Shed 1	2000	296 sf	No Foundation / Wood Frame
Storage Shed 2	2014	80 sf	No Foundation / Wood Frame
Shack	2014	192 sf	Wood Frame
Garage	2014	400 sf	Wood Frame
Quonset 1 (near 210 Ave SW)	2000	2,114 sf	No Foundation
Quonset 2 (near bridge)	2000	2,142 sf	No Foundation
TOTAL		25,098 sf	

In addition to the above noted buildings, there are equipment and other site improvements.





SPRUCE MEADOWS WAY

STONEY TRAIL

DERFOOT TRAIL

210 AVE SW

MACLEOD TRAIL

LOCATION OVERVIEW

LOCATION OVERVIEW



TRAFFIC COUNT

210th Avenue SE, just East of Highway 2A
7,000 vehicles per day

Highway 2A and 210th Avenue SE
22,000 vehicles per day

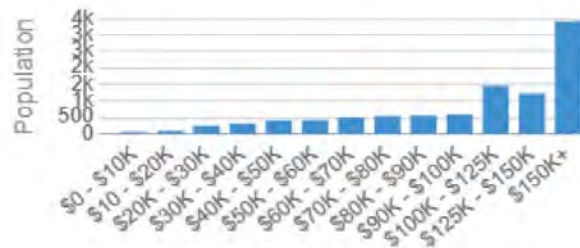
AREA DEMOGRAPHICS

CRITERIA	3 KM RADIUS	5 KM RADIUS
Total Population	28,358.8	72,702.7
Total Households	9,948.9	25,572.9
Average Size of Families	3.1	3.1
Median Household Income	\$121,528.44	\$124,948.80
Average Household Income	138,069.2	146,633.2
Average Age	34.9	36.7
Total Population with University Certificate, Diploma or Degree at Bachelor Level or Above	6,829.5 (41.8%)	17,166.2 (41.7%)



MEDIAN HOUSEHOLD INCOME
Within Trade Area (3 km Radius)

\$121,528



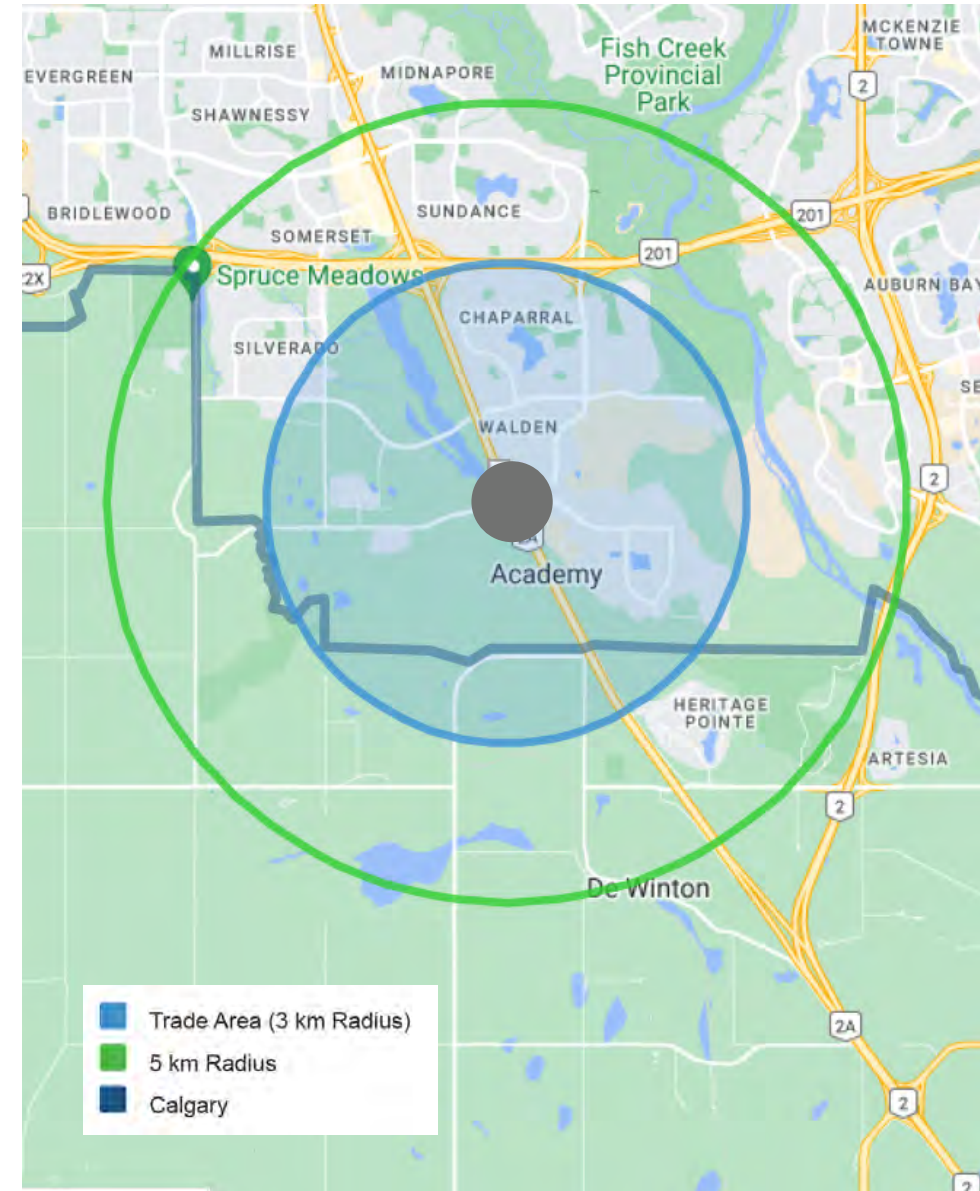
EDUCATION
Within Trade Area
(3 km Radius)

97%



EMPLOYMENT RATE
Within Trade Area
(3 km Radius)

67%



- Trade Area (3 km Radius)
- 5 km Radius
- Calgary

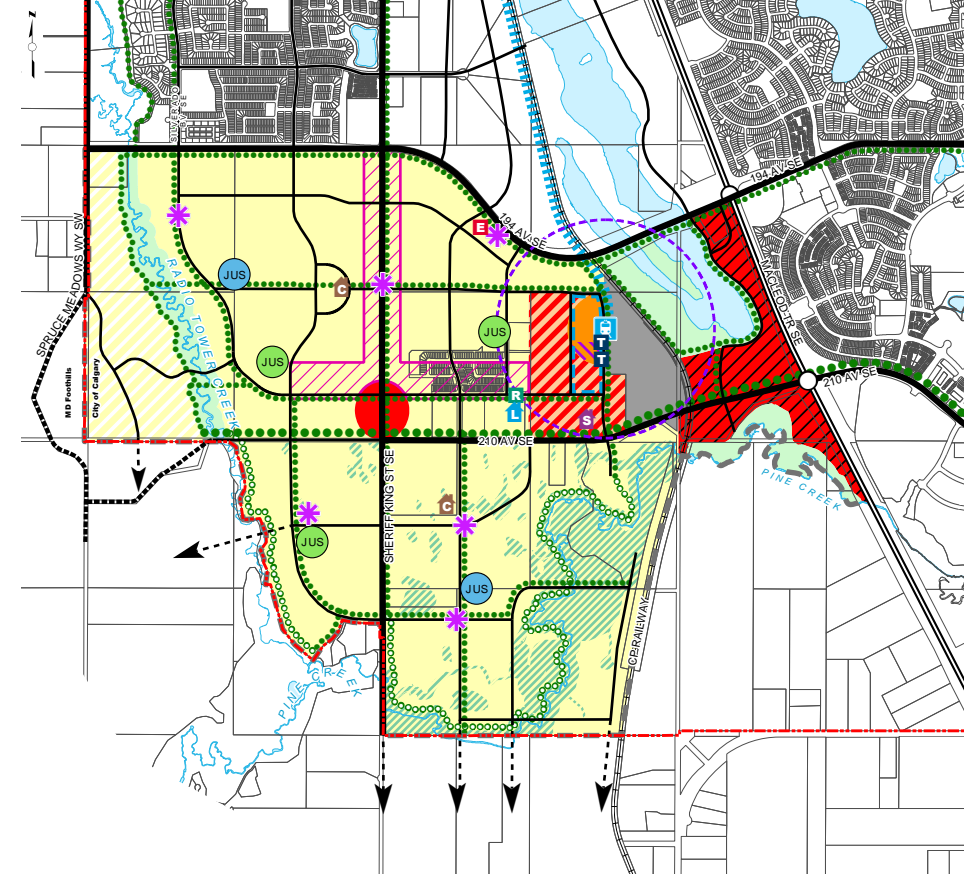
LOCATION OVERVIEW

AREA STRUCTURE PLAN

The Subject Property is a part of the West Macleod Area Structure Plan which provides vision for the future development of 861 hectares (2,127 acres) of land located within the south section of Calgary; bound by 194 Avenue South to the north, the Municipal boundary to the south and west and Macleod Trail S and the Canadian Pacific Rail (CPR) tracks to the east.

The Subject Property is designated as “Gateway Planning Area” which is to provide for a variety of commercial and office uses to service the local and regional markets as an initial form of development prior to the eventual desired intensification in accordance with the policies and guidelines of the Transit Station Planning Area. ‘Site B’ within the Gateway Planning Area is intended to generally provide for larger format regional commercial uses on the outer periphery of the Transit Station Planning Area. All development within the Gateway Planning Area will be designed to provide an appropriate entranceway design along Macleod Trail as the predominant southern gateway into Calgary.

The Transit Station Planning Area supports higher residential densities, direct and convenient pedestrian routes to the LRT station, and a built form that complements and supports the transit function.



West Macleod Area Structure Plan

Legend					
	Study Area Boundary		Active Connectivity Area		L.R.T. Alignment
	City Limits		Transit Station Planning Area		L.R.T. Station
	Residential Area		Joint Use Site		Expressway
	Residential Area of Interest		Joint/Joint Use Site		Arterial Street
	High Density/ Mixed Use		Neighbourhood Node		Collector Road
	Medium Density/ Mixed Use		Community Centre		Potential Road
	Mixed Use Community Node		Fire Hall/ EMS		M.D. Foothills Road
	Gateway Planning Area		Library Site		Full Interchange
	Conservation Study Area (subject to further review)		Public High School Site		Partial Interchange
	LRT Station and Facilities		Recreation Centre		Primary Cycling Network
	Main Street Retail Area		Tower Sites		Regional Pathway
	Environmental Open Space Study Area				Green Corridor
	Corridor Planning Area				

5.9 Gateway Planning Area (Initial Development)

5.9.1 Purpose

The Gateway Planning Area, as identified on Maps 4 and 5, is to provide for a variety of commercial and office uses to service the local and regional markets as an initial form of development prior to the eventual desired intensification in accordance with the policies and guidelines of the Transit Station Planning Area. 'Site A' within the Gateway Planning Area is intended to provide for pedestrian oriented site development within walking distance of the future LRT Station.

'Site B' within the Gateway Planning Area is intended to generally provide for larger format regional commercial uses on the outer periphery of the Transit Station Planning Area. All development within the Gateway Planning Area will be designed to provide an appropriate entranceway design along Macleod Trail as the predominant southern gateway into Calgary.

5.9.2 Gateway Planning Area Policies

1. Composition of Gateway Planning Area

- a. The Gateway Planning Area shall be comprised of commercial uses, including office and retail uses.
- b. Existing development within the Gateway Planning Area shall be permitted to continue with its current use at the time of Council approval of the Plan in accordance with the Land Use Bylaw.
- c. Development adjacent to environmentally significant areas shall be sensitively treated to maintain the amenity values of these areas.
- d. District Energy plant(s) and innovative green building technology are encouraged to be developed in this area.
- e. All land areas within the Gateway Planning Area may develop initially in accordance with the Medium Density/Mixed Use policies, as identified in Section 5.11.

2. Design of Gateway Planning Area

- a. The design of the Gateway Planning Area:
 - i. shall provide a visually appealing entranceway to Calgary through the incorporation of signage, landscaping, and architectural features that enhance the image of the city;

- ii. where development does not front onto Macleod Trail, the rear of buildings shall be built to the same design quality and facade treatment as the front of the building;
- iii. should recognise the importance of the built form and public realm adjacent to the Priddis Slough and Pine Creek through landscaping, stormwater management, etc.; and
- iv. should be designed in accordance with the Development Design Guidelines provided in Appendix D and the Environmental Design Guidelines outlined in Appendix E.

3. Development within 'Site A'

'Site A' is located on the east side of the CP Rail tracks, as identified on Map 5. Development within 'Site A' shall:

- i. provide buildings that front and provide building entrances to the street, sidewalk or internal road;
- ii. provide vehicle parking areas that encourage safe and comfortable pedestrian movement within the site;
- iii. provide direct pedestrian connections to the Regional Pathway that leads to the LRT Station; and
- iv. provide for primarily smaller and medium format commercial uses.

4. Development within 'Site B'

'Site B' is located on the outer periphery of the Transit Station Planning Area, as identified on Map 4. Development within 'Site B' shall:

- i. provide clear and direct pedestrian connections from parking facilities to the entrance points of development;
- ii. provide direct pedestrian connections to the Regional Pathway that leads to the LRT Station;
- iii. encourage parking and road standard requirements to be reduced where it improves the pedestrian environment; and
- iv. provide for primarily larger format commercial uses.

5. Evaluation of Gateway Planning Area

- a. The detailed uses and size of the Gateway Planning Area shall be determined at the Outline Plan/Land Use application stage.
- b. A Concept Plan shall be submitted at the Outline Plan/Land Use application stage that shows how the area may transition to an ultimate form of development. The concept plan shall show the proposed initial concept for the Gateway Planning Area and ultimate concept plan for the Medium/Density Mixed Use Area for the subject site (Site A or Site B as generally identified on Map 5) that includes:
 - i. a grid-like street network to ensure that the subdivision, including both the block and street networks, does not compromise the transition to mixed use; and
 - ii. building envelope locations within the grid-like street network that meet the intent of the Medium Density/Mixed Use Area policies.

6. Transition from Gateway Planning Area to a Medium Density/Mixed Use Area

- a. Alternative Land Use districts may be proposed to allow development to transition over time, where considered appropriate by the Approving Authority.
- b. Once existing development within this area begins transition and proposes uses in compliance with the policies of the Medium Density/Mixed Use Area, no amendment to the Plan will be required.

5.8 Transit Station Planning Area

5.8.1 Purpose

The purpose of these policies is to provide for transit-oriented development surrounding the future Light Rail Transit station. The Transit Station Planning Area supports higher residential densities, direct and convenient pedestrian routes to the LRT station and a built form that complements and supports the transit function. The intent of the Transit Station Planning Area is to make transit a more appealing, accessible and efficient transportation choice for residents.

5.8.2 Transit Station Planning Area Policies

1. Composition of the Transit Station Planning Area

- a. The Transit Station Planning Area should apply to the area conceptually identified on Map 4. Further detail of the Transit Station Planning Area is provided in the policies of Sections, 5.10, 5.11, 5.12, 5.13 and 5.14. The area may include, but is not limited to:
 - i. an LRT station;
 - ii. a light rail vehicle maintenance facility;
 - iii. a park and ride facility;
 - iv. high and medium density/mixed use areas, including 'live-work' uses;
 - v. a main street retail area;
 - vi. office uses;
 - vii. commercial uses;
 - viii. transitional uses within the Gateway Planning Area;
 - ix. active and passive recreational and cultural opportunities;
 - x. special care facilities;
 - xi. child care services; and
 - xii. public and institutional uses.
- b. District Energy plant(s) and innovative green building technology are encouraged in this area.

- c. No drive-thru businesses shall be located within the Transit Station Planning Area, unless developed as part of the Gateway Planning Area (Initial Development).
- d. Family oriented development in the form of two or more bedroom dwelling units is encouraged to be developed within Multi-Residential Developments within the Transit Station Planning Area.
- e. Opportunities for rooftop and community gardens are encouraged to be developed to support food production for local residents and businesses.

2. Residential Density within the Transit Station Planning Area

- a. The Transit Station Planning Area should:
 - i. achieve a minimum density of 98.8 units per gross developable hectare (40 units per gross developable acre) where located within the High Density/Mixed Use area, as identified on Maps 4 and 5; and
 - ii. achieve a minimum density of 49.4 units per gross developable hectare (20 units per gross developable acre) where located within the Medium Density/Mixed Use Area, as identified on Maps 4 and 5.
- b. As identified on Maps 4 and 5, and in accordance with the policies of Section 5.10 and 5.11, the highest density residential development within the Transit Station Planning Area shall be located closest to the future transit station. Conversely, the lower residential densities shall be located farthest from the future transit station.

3. Limited Land Supply

Notwithstanding sections 5.8.2 (1 and 2) above, the landownerships within the Transportation Station Planning Area (TSPA) is limited and achieving the goals of the TSPA rests principally on those lands west of the proposed LRT station. It is recognized that this small portion of the TSPA cannot achieve all of these goals.

4. Light Rail Vehicle Maintenance Facility

- a. A Light Rail Vehicle (LRV) Maintenance Facility should be located within the LRT Station and Facilities Planning Area, on City lands only.
- b. A functional study shall be completed to determine:
 - i. the land requirements and site design of the LRV Storage and Maintenance Facility;
 - ii. LRT alignment and station location in the Plan area;
 - iii. park and ride facilities; and
 - iv. transit terminal facilities.
- c. The design of the LRV Maintenance Facility shall provide appropriate interface treatment with any adjacent uses. Further, it should respect land ownership to the west of City lands and its intended transit oriented residential development.

5. Park and ride Facility within the Transit Station Planning Area

- a. A park and ride facility should be required within the Transit Station Planning Area.
- b. The park and ride facility should:
 - i. be located within 400 metres of the transit station, on City lands only;
 - ii. accommodate parking stalls integrated with adjoining land uses, located in an underground parkade, or multi-level parking facility;
 - iii. include surface parking facilities, only as an interim solution;
 - iv. have dual use possibilities with transit supportive uses;
 - v. be designed to reduce the visual impact of parking through landscaping and site design; and
 - vi. provide for direct pedestrian access from the facility to the station.

6. Parking within the Transit Station Planning Area

- a. At the Outline Plan/Land Use Amendment stage, opportunities for shared parking between other uses and the park and ride facility should be considered within the Transit Station Planning Area.
- b. Parking and related vehicular access should be located and designed in relation to the

future transit station so that it does not limit pedestrian access or endanger pedestrian safety.

- c. Surface parking for uses within the Transit Station Planning Area should be located at the rear of buildings.

7. Mobility within the Transit Station Planning Area

- a. The road network within the Transit Station Planning Area should provide for interconnected systems that accommodate convenient and efficient pedestrian access to the LRT station.
- b. Active mode connections shall be provided through development sites in the general area shown as the Active Connectivity Area on Map 5, to the satisfaction of the Development Authority, to increase connectivity and mobility in the Transit Station Planning Area.

Bylaw 15P2019

- c. The use of culs-de-sac and p-loops should be avoided within the Transit Station Planning Area and may be allowed only on a limited and select basis.

8. Pedestrian Linkages within the Transit Station Planning Area

- a. Pedestrian linkages should consist predominantly of a contiguous sidewalk system that creates efficient and contiguous routes to the LRT Station and adjacent neighbourhoods.
- b. Direct pedestrian access to the transit system should be provided within the Transit Station Planning Area, incorporating the Regional Pathway and Conservation Study Areas.

9. Building Orientation within the Transit Station Planning Area

- a. Building entrances within the Transit Station Planning Area should be oriented towards roads, sidewalks and pedestrian areas.
- b. The design of the transit station should be incorporated with nearby buildings, public spaces and other features.

10. Park Space within the Transit Station Planning Area

Public park space within the Transit Station Planning Area should be located in close proximity to higher density residential development and the transit station and be provided with accessible pedestrian linkages.

TRANSIT STATION PLANNING AREA | POLICIES

11. Design of Transit Station Planning Area

- a. A Concept Plan for the relevant portion of the Transit Station Planning Area should be considered at the Outline Plan/Land Use Amendment stage, the requirements of which are outlined in Appendix C.5.
- b. The City of Calgary *Transit Oriented Development Policy Guidelines* should be used to evaluate development within the Transit Station Planning Area.
- c. The Transit Station Planning Area should be designed in accordance with the Development Design Guidelines provided in Appendix D and the Environmental Design Guidelines outlined in Appendix E.

12. Community Recycling Depot

- a. A Community Recycling Depot may be provided within the Transit Station Planning Area, within the LRV facility lands.
- b. The Community Recycling Depot should be located within a surface parking area provided for a publicly accessed service. The Community Recycling Depot should not be visible from the street; however, appropriate signage may direct the public to its location.

13. Alternative Energy in the Transit Station Planning Area

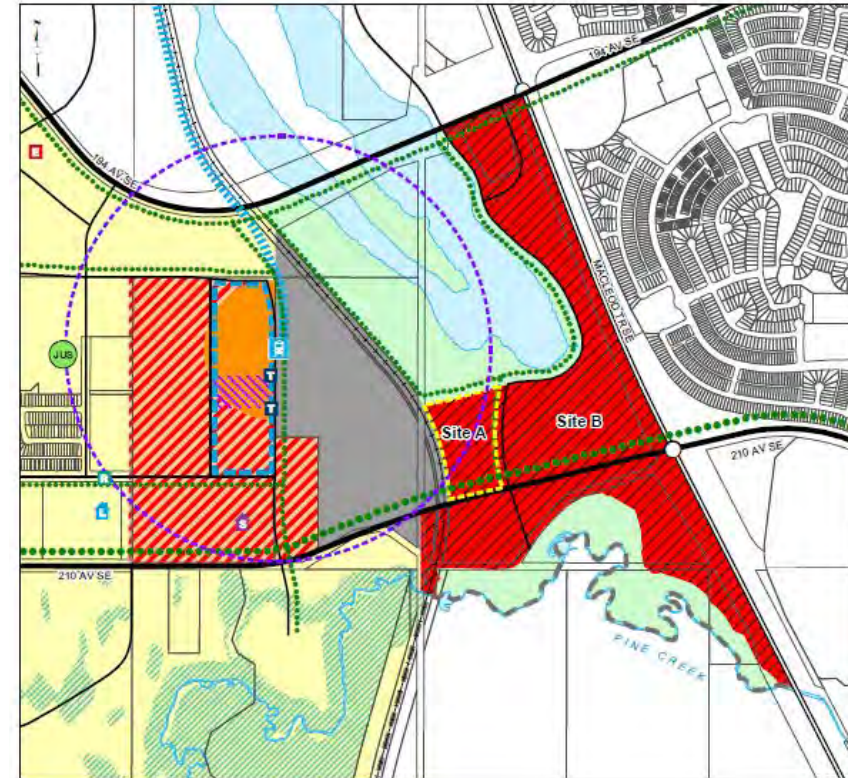
- a. The use of District Energy (heating and cooling) as an alternative form of energy within the Transit Station Planning Area is encouraged.
- b. District Energy plant(s) should be located on sites that can contain dual land uses or located within buildings that provide for multiple uses.

14. Reserves

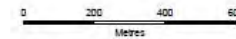
Where an over dedication of Municipal Reserve exists, Council may explore options for early acquisition of lands.

15. Active Uses

Active uses, such as retail stores and restaurants, are required at-grade within the Main Street Retail Area. Other uses, such as office and dwelling units, may be considered at grade for all other streets in the Transit Station Planning Area.



West Macleod Area Structure Plan Transit Station Planning Area



This map is conceptual only. No measurements of distances or areas should be taken from this map.

Legend



OFFERING PROCESS

Pursuant to an order (the “Order”) of the Court of King’s Bench of Alberta (the “Court”) made on November 17, 2023, KSV Restructuring Inc. (“KSV”) was appointed receiver (in such capacity, the “Receiver”) of the assets, undertakings and properties (the “Property”) of, among others, Spruce It Up Land Corp. The Property includes the Subject Property. C&W has been exclusively retained to seek proposals to acquire the Subject Property. Interested parties will be required to execute and submit the Receiver’s form of Confidentiality Agreement prior to receiving detailed information about the Subject Property, including a comprehensive collection of pertinent site surveys, building details, environmental reports, lease documents, and other relevant information. **For greater clarity, Spruce It Up Garden Centre Inc. (i.e., the Tenant) is not subject to the receivership proceedings**

Interested parties are invited to submit an offer to purchase (an “Offer”) on the Receiver’s form of Agreement of Purchase and Sale. From the submissions, one or more of the Offers may be short listed to proceed to the next stage of the process where it is the intent of the Receiver is to enter into a binding Agreement of Purchase and Sale for the Subject Property. The Subject Property is being sold on an “as is, where is” basis and all Offers are subject to Court approval.

All participants in the process do so of their own accord. Neither the Receiver nor C&W make any representation or warranty, or any agreement whatsoever, that the Receiver will accept any Agreement of Purchase and Sale, before or after negotiations, which may be extensive, that the Receiver will accept the highest or any price offered or, that the Receiver or C&W, shall compensate any participant for any costs incurred in its participation in the process.

Offers will be evaluated on, among other criteria, the consideration offered for the Subject Property, the prospective purchaser’s ability to complete the transaction, and the proposed conditions of closing.

CONFIDENTIALITY

By receipt of this CIM, the recipient agrees that this document and its contents are confidential; that it will hold and treat it in the strictest of confidence; that it will not directly or indirectly disclose this document or its contents to any firm, person, or entity without the Receiver’s prior written consent and that it will not use or permit this document to be used in any manner detrimental to the interests of the Receiver, C&W, or their affiliates. This document is not to be reproduced, in whole or in part, without the prior written consent of the Receiver and C&W. The terms and conditions in this section will relate to all sections of this CIM as if stated independently therein.

OFFERING PROCESS



DEADLINE

The submission deadline for all Offers is 4:00 PM MST on **Thursday, February 29, 2024**

ADVISOR CONTACT

Please submit your Offer to
Cushman & Wakefield ULC c/o:

Brent Johannesen
Vice President
Industrial Sales & Leasing
403 261 1116
brent.johannesen@cushwake.com

Jordan LeBlanc
Associate Vice President
Industrial Sales & Leasing
403 261 1166
jordan.leblanc@cushwake.com



Cushman & Wakefield ULC
Bow Valley Square IV
250 - 6th Ave SW, Suite 2400
Calgary, AB T2P 3H7
cushmanwakefield.com

20.75 ACRE DEVELOPMENT SITE
159 - 210 AVENUE SW
CALGARY, ALBERTA

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Vice President
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Zack Darragh
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zack.darragh@cushwake.com

Sam Hurl
Associate
Industrial Sales & Leasing
403 261 1115
sam.hurl@cushwake.com

APPENDIX D

[ATTACHED]

AGREEMENT OF PURCHASE AND SALE

BETWEEN

KSV RESTRUCTURING INC.,
solely in its capacity as Court-appointed receiver and manager and
not it in its personal or capacity of the real property legally
described in Schedule “A” hereto, and all present and future
undertakings and property, both real and personal of Spruce It
Up Land Corp.

- and -

WESTERN SECURITIES LIMITED

Dated: March 14, 2024

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AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT made this 14th day of March, 2024 (the “**Effective Date**”).

BETWEEN:

KSV RESTRUCTURING INC.,

solely in its capacity as Court-appointed receiver and manager and not it in its personal or capacity (in such capacity, the “**Receiver**”) of the real property legally described in Schedule “A” hereto (the “**Real Property**”), and all present and future undertakings and property, both real and personal of Spruce It Up Land Corp. (the “**Debtor**”), which is located at or related to or used in connection with or arising from or out of the Real Property (together with the Real Property, the “**Property**”)

- and -

WESTERN SECURITIES LIMITED, or its duly appointed assignee

(collectively, the “**Purchaser**”)

WHEREAS pursuant to an order of Court of King’s Bench of Alberta (the “**Court**”) made on November 17, 2023 (the “**Receivership Order**”) and the filing of the Monitor’s Certificate re: Effectiveness of Receivership Order, on November 21, 2023, KSV Restructuring Inc. (“**KSV**”) was appointed as the Receiver, without security, of the Property;

AND WHEREAS the Purchaser wishes to purchase and the Receiver wishes to sell the Purchased Assets (as defined herein) upon the terms and subject to the conditions set out herein;

NOW THEREFORE, in consideration of the promises, mutual covenants and agreements contained in this Agreement (as defined herein), and for other good and valuable consideration, the receipt and sufficiency of which are each hereby acknowledged by the Parties (as defined herein), the Parties agree as follows:

ARTICLE 1 DEFINED TERMS

1.1 Definitions.

In this Agreement:

“**Accounts Payable**” means all amounts relating to the Business or the Property owing to any Person in connection with the purchase of goods or services in the ordinary course of business;

“**Agreement**” means this agreement of purchase and sale, including all schedules and all amendments or restatements, as permitted, and references to “**article**”, “**section**” or “**schedule**” mean the specified article, section of, or schedule to this Agreement and the expressions “hereof”, “herein”, “hereto”, “hereunder”, “hereby” and similar expressions refer to this Agreement and not to any particular section or other portion of this Agreement;

“**Applicable Law**” means, with respect to any Person, property, transaction, event or other matter, all applicable laws, statutes, regulations, rules, by-laws, ordinances, protocols, regulatory policies, codes, guidelines, official directives, orders, rulings, judgments and decrees of any Governmental Authority;

“**Approval and Vesting Order**” means the approval and vesting order issued by the Court approving this Agreement and the transactions contemplated by this Agreement and conveying to the Purchaser the Purchased Assets free and clear of all Encumbrances, other than the Permitted Encumbrances, and which order shall be in a substantially in the form substantively attached as **Schedule “B”** hereto, subject to amendments acceptable to the Receiver and the Purchaser, each acting reasonably;

“**Assignable Assets**” has the meaning given in section 3.1(3) herein;

“**Assumed Liabilities**” means all Liabilities which relate to the Purchased Assets and the Contracts, in each case solely in respect of the period from and after the Closing Time and not relating to any obligation, default accrued or existing prior to or as a consequence of Closing, other than Excluded Liabilities;

“**Business**” means the business of the Debtor;

“**Business Day**” means a day on which banks are open for business in the City of Calgary but does not include a Saturday, Sunday or statutory holiday in the Province of Alberta;

“**Claims**” means any and all claims, demands, complaints, grievances, actions, applications, suits, causes of action, orders, charges, indictments, prosecutions or other similar processes, assessments or reassessments, judgments, debts, liabilities, expenses, costs, damages or losses, contingent or otherwise, whether liquidated or unliquidated, matured or unmatured, disputed or undisputed, contractual, legal or equitable, including loss of value, professional fees, including solicitor and client costs and disbursements, and all costs incurred in investigating or pursuing any of the foregoing or any proceeding relating to any of the foregoing, related to the Property or the Debtor, and “**Claim**” means any one of them;

“**Closing**” means the successful completion of the Transaction;

“**Closing Date**” means the date that is the later of: (i) the date that is seven (7) Business Days following the date on which the Approval and Vesting Order is issued by the Court; and (ii) the date that is seven (7) Business Days following the date on which any appeals or motions to set aside or vary the Approval and Vesting Order have been finally determined, or, if the Parties agree, such other date as agreed in writing by the Parties;

“**Closing Time**” means 2:00 p.m. (Calgary time) on the Closing Date or such other time as agreed in writing by the Parties;

“**Contracts**” means all of the contracts, licences, leases, agreements, obligations, promises, undertakings, understandings, arrangements, documents, commitments, entitlements and engagements to which the Debtor is a party related to the Property described in **Schedule “D”** hereto, other than the Excluded Contracts described in Schedule “**E**” hereto;

“**Court**” has the meaning set out in the recitals hereof;

“**Cure Costs**” means the amount of all monetary defaults, if any, existing in respect of any Contracts that are required to be paid in order to obtain the consent necessary to permit the assignment of such Contract;

“**Deposit**” has the meaning given in section 4.2 herein;

“**Effective Date**” means the date the Receiver delivers a fully executed Agreement to the Purchaser.

“**Encumbrances**” means all liens, charges, security interests, pledges, leases, offers to lease, title retention agreements, mortgages, restrictions on use, development or similar agreements, easements, rights-of-way, title defects, options or adverse claims or encumbrances of any kind or character whatsoever;

“**Environmental Claims**” has the meaning given in section 12.3 herein;

“**ETA**” means the *Excise Tax Act*, R.S.C. 1985, c. E-15, as amended;

“**Excluded Assets**” means all assets, undertakings and properties other than the Purchased Assets, which Excluded Assets includes the following:

- (a) the Debtor’s cash or cash equivalents;
- (b) the Debtor’s accounts receivable, including any insurance refunds and all GST refunds or other tax receivables;
- (c) the Excluded Contracts;
- (d) original tax records and books and records pertaining thereto, minute books, corporate seals, taxpayer and other identification numbers and other documents relating to the organization, maintenance and existence of the Debtor or the Purchased Assets;
- (e) the benefit of any prepaid expenses or deposits with any Person (including, without limitation, the benefit of any prepaid rent or purchaser deposits), public utility or Governmental Authority; and

- (f) the benefit of any refundable Taxes payable or paid by the Debtor or paid by the Receiver in respect of the Purchased Assets and applicable to the period prior to the Closing Date net of any amounts withheld by any taxing authority, and any claim or right of the Debtor or the Receiver to any refund, rebate, or credit of Taxes for the period prior to the Closing Date;

“**Excluded Contracts**” all those Contracts described in **Schedule “E”** hereto;

“**Excluded Liabilities**” has the meaning given in section 3.3 herein;

“**Governmental Authority**” means governments, regulatory authorities, governmental departments, agencies, commissions, bureaus, officials, ministers, Crown corporations, courts, bodies, boards, tribunals or dispute settlement panels or other law or regulation-making organizations or entities: (a) having or purporting to have jurisdiction on behalf of any nation, province, republic, territory, state or other geographic or political subdivision thereof, including, without limitation, any municipality in which the Real Property is located; or (b) exercising, or entitled or purporting to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power, and “**Governmental Authority**” means any one of them;

“**Hazardous Materials**” means any contaminants, pollutants, substances or materials that, when released to the natural environment, could cause, at some immediate or future time, harm or degradation to the natural environment or risk to human health, whether or not such contaminants, pollutants, substances or materials are or shall become prohibited, controlled or regulated by any Government Authority and any “**contaminants**”, “**dangerous substances**”, “**hazardous materials**”, “**hazardous substances**”, “**hazardous wastes**”, “**industrial wastes**”, “**liquid wastes**”, “**pollutants**” and “**toxic substances**”, all as defined in, referred to or contemplated in federal, provincial and/or municipal legislation, regulations, orders and/or ordinances relating to environmental, health and/or safety matters and, not to limit the generality of the foregoing, includes asbestos, urea formaldehyde foam insulation and mono or poly-chlorinated biphenyl wastes;

“**GST**” means goods and services tax imposed under Part IX of the ETA;

“**ICA**” has the meaning given in section ARTICLE 9(1) herein;

“**Indemnitees**” has the meaning given in section 12.3 herein;

“**Interim Period**” means the period from and including the date that this Agreement is executed by the Parties to and including the Closing Date;

“**ITA**” means the *Income Tax Act*, R.S.C. 1985, c.1, as amended;

“**KSV**” has the meaning set out in the recitals hereof;

“**Notice**” has the meaning given in section 14.3 herein;

“**Parties**” means the Receiver and the Purchaser;

“**Permits**” means all the authorizations, registrations, permits, certificates of approval, approvals, consents, commitments, rights or privileges issued, granted or required, if any, by any Governmental Authority in respect of the Purchased Assets;

“**Permitted Encumbrances**” means all those Encumbrances described in **Schedule “C”** hereto;

“**Person**” means any individual, partnership, limited partnership, limited liability company, joint venture, syndicate, sole proprietorship, company or corporation with or without share capital, unincorporated association, trust, trustee, executor, administrator or other legal personal representative, Governmental Authority or other entity however designated or constituted;

“**Project Rights and Documents**” means the Permits and all architectural, engineering and construction drawings, plans and specifications, budgets, schedules, manuals, promotional and marketing materials, applications, books, records, studies, reports (including environmental, geotechnical and other reports), surveys, appraisals and other documents, in each case pertaining to the construction, development, ownership and operation of the Real Property or any part thereof;

“**Property**” has the meaning set out in the recitals hereof;

“**Purchase Price**” has the meaning set out in section 4.1 herein;

“**Purchased Assets**” means all the right, title and interest, if any, of the Debtor in and to the following:

- (a) the Real Property;
- (b) those Contracts that the Purchaser expressly agrees to assume on or before the expiry of the Purchaser’s Condition Date, but only to the extent such Contracts are transferrable to the Purchaser or the Purchaser’s permitted assignees.
- (c) the Project Rights and Documents in the possession or subject to the control of the Receiver, but only to the extent transferable to the Purchaser or the Purchaser’s permitted assignees; and
- (d) all of the building(s) and improvements erected on the Real Property.

“**Purchaser**” means Western Securities Limited, a corporation duly formed and validly subsisting under the laws of Province of Alberta, or its duly appointed assignee;

“**Purchaser’s Condition Date**” means fifteen (15) days following the Effective Date;

“**Real Property**” has the meaning set out in the recitals hereof;

“**Receiver**” has the meaning set out in the recitals hereof;

“**Receivership Order**” has the meaning set out in the recitals hereof;

“**Taxes**” means all taxes, GST, land transfer taxes, charges, fees, levies, imposts and other assessments, including all income, sales, use, goods and services, harmonized, value added, capital, capital gains, alternative, net worth, transfer, profits, withholding, excise, real property and personal property taxes, and any related interest, fines and penalties, imposed by any Governmental Authority, and whether disputed or not;

“**Third Party**” has the meaning given in section 3.1(3) herein; and

“**Transaction**” means the transaction of purchase and sale contemplated by this Agreement.

ARTICLE 2 SCHEDULES

2.1 Schedules.

The following schedules are incorporated in and form part of this Agreement:

<u>Schedule</u>	<u>Description</u>
Schedule A	Real Property
Schedule B	Approval and Vesting Order
Schedule C	Permitted Encumbrances
Schedule D	Contracts
Schedule E	Excluded Contracts

ARTICLE 3 AGREEMENT TO PURCHASE

3.1 Purchase and Sale of Purchased Assets.

- (1) Subject to the terms and conditions of this Agreement, the Receiver hereby agrees to sell, assign, convey and transfer to the Purchaser, and the Purchaser hereby agrees to purchase and assume, all of the Debtor’s and the Receiver’s right, title and interest in and to the Purchased Assets, free and clear of all Encumbrances other than the Permitted Encumbrances.
- (2) Subject to the terms and conditions of this Agreement, the Purchaser agrees to assume, on the Closing Date, effective as of the Closing Time, and shall pay, discharge, honour, fulfill and perform, as the case may be and as and when due, from and after the Closing Date, the Assumed Liabilities.
- (3) The Purchaser shall be responsible for any Cure Costs in respect of any Contracts.
- (4) This Agreement or any document delivered in connection with this Agreement shall not constitute an assignment of any rights, benefits or remedies under any Permits or Contracts (collectively, the “**Assignable Assets**”) that form part of the Purchased Assets and which are not assignable by the Receiver to the Purchaser without the required consent of the other party or parties thereto or a Governmental Authority (collectively,

the “**Third Party**”). To the extent any such consent is required and not obtained by the Receiver prior to the Closing Date, then, to the extent permitted by Applicable Law:

- (a) the Receiver will, at the request, direction and sole cost of the Purchaser, acting reasonably, assist the Purchaser, in a timely manner and on a commercially reasonable best-efforts basis, in applying for and obtaining all consents or approvals required under the Assignable Assets in a form satisfactory to the Receiver and the Purchaser, acting reasonably, and take such actions and do such things as may be reasonably and lawfully designed to attempt to provide the benefits of the Assignable Assets to the Purchaser, including holding those Assignable Assets in trust for the benefit of the Purchaser or acting as agent for the Purchaser pending such assignment, provided that pursuant to such arrangements the Purchaser fully indemnifies the Receiver and Indemnitees for all costs, obligations or liabilities incurred thereunder or in connection therewith; and
- (b) in the event that the Receiver receives funds with respect to those Assignable Assets, the Receiver will promptly pay over to the Purchaser all such funds collected by the Receiver, net of any outstanding costs provided in subsection (a) above, for a period of ninety (90) days after the Closing Date.

3.2 Excluded Assets.

Notwithstanding anything else in this Agreement, the Purchased Assets shall not include the Excluded Assets.

3.3 Excluded Liabilities.

With the sole exception of the Assumed Liabilities and Permitted Encumbrances, the Purchaser is not assuming, and shall not be deemed to have assumed, any liabilities, obligations or commitments of the Debtor, the Receiver or any other Person, whether known or unknown, fixed or contingent or otherwise, including any debts, obligations, sureties, positive or negative covenants or other liabilities directly or indirectly arising out of or resulting from the conduct or operation of the Business or the Property or the Debtor’s ownership or interest therein, whether pursuant to this Agreement or as a result of the Transaction (collectively, the “**Excluded Liabilities**”). For greater certainty, the Excluded Liabilities shall include, but not be limited to, the following:

- (a) except as otherwise agreed in this Agreement, all Taxes payable by the Debtor prior to the Closing Date;
- (b) except as otherwise agreed in this Agreement, all Taxes relating to any matters or assets other than the Purchased Assets following the Closing Date;
- (c) any liability, obligation or commitment associated with the Accounts Payable, Business or any employees of the Debtor;

- (d) any liability, obligation or commitment associated with the Contracts, except with respect to those Contracts that the Purchaser agrees to assume on or before the expiry of the Purchaser's Condition Date;
- (e) except as otherwise agreed in this Agreement, any liability, obligation or commitment resulting from an Encumbrance that is not a Permitted Encumbrance;
- (f) any liability, obligation or commitment associated with any of the Excluded Assets; and
- (g) except as otherwise agreed in this Agreement, any liability, obligation or commitment in respect to Claims arising from or in relation to any facts, circumstances, events or occurrences existing or arising prior to the Closing Date.

ARTICLE 4 PURCHASE PRICE AND SATISFACTION OF PURCHASE PRICE

4.1 Purchase Price.

The purchase price for the Purchased Assets shall be the aggregate of [REDACTED] (the "Purchase Price").

4.2 Deposit.

- (1) The Parties agree that the Purchaser has paid the Receiver a deposit of [REDACTED] (the "Deposit"), which Deposit shall be held in accordance with the provisions of this Agreement pending completion or other termination of this Agreement and shall be applied against and towards the Purchase Price due on completion of the Transaction on the Closing Date.
- (2) The Parties agree that the Receiver shall cause the Deposit to be placed in a non-interest bearing account and shall be credited to the Purchaser on the Closing Date.
- (3) The Purchaser acknowledges that if the Deposit is in excess of Fifty Thousand Dollars (\$50,000) and held by the Receiver, in trust, in an account for more than three (3) months, tax reporting by the Receiver to Canada Revenue Agency may be required by Applicable Laws (the "Tax Reporting Obligations"), including without limitation in the form of a T3 return (or similar tax or information returns). The Purchaser agrees to provide the Receiver and the Receivers solicitors, promptly upon request, with any information the Receiver may from time to time request in order to assist the Receiver to comply with the Tax Reporting Obligations, which information may include, without limitation, the name, address, jurisdiction of residence, taxpayer information number and birth date (for individuals) of the Person for whom the Deposit is held in trust. The Purchaser hereby irrevocably authorizes the Receiver to prepare and file with Canada Revenue Agency all documents, information and forms as may be necessary to satisfy the Tax Reporting Obligations as and when required by Applicable Laws, and the Purchaser hereby agree to waives any right to privilege (including solicitor-client

privilege, to the extent applicable) and any right to confidentiality in respect of any information that is set forth in any such tax reporting made by the Receiver.

- (4) If solely by reason of the default of the Purchaser, the Transaction contemplated herein is not completed, then the Deposit held by the Purchaser's Lawyer will be forfeited to the Vendor as liquidated damages and not as a penalty without further recourse against the Purchaser for such default in accordance with Section 13.2.
- (5) If the Purchaser has not waived its due diligence condition in writing pursuant to Section 11.2 on or before the Purchaser's Condition Date, the Deposit shall be returned to the Purchaser, together with accrued interest, if any.

4.3 Satisfaction of Purchase Price.

The Purchaser shall indefeasibly pay and satisfy the Purchase Price as follows:

- (a) the Deposit shall be applied against the Purchase Price; and
- (b) the remainder of the Purchase Price, being the net amount owing after deducting the Deposit, shall be paid by the Purchaser to the Receiver on Closing.

4.4 Allocation of Purchase Price.

The Parties, acting reasonably and in good faith, covenant to use best efforts to agree to allocate the Purchase Price amongst the Purchased Assets in a mutually agreeable manner on or prior to the Closing Time, provided that failure of the Parties to agree upon an allocation shall not result in the termination of this Agreement but rather shall result in the nullity of the application of this section of the Agreement such that each Party shall be free to make its own reasonable allocation.

4.5 Adjustment of Purchase Price.

- (1) The Purchase Price shall be adjusted as of the Closing Time in a manner and amount to be agreed upon by the Parties, acting reasonably, for any property Taxes (including interest thereon), utilities and any other items which are usually adjusted in purchase transactions involving assets similar to the Purchased Assets in the context of a receivership sale. For greater certainty, and notwithstanding any provision to the contrary in this Agreement, the Purchaser shall be solely responsible for any and all property Taxes that are added to the tax roll on or after the Closing Date, regardless of the period to which such property Taxes apply. The Receiver shall prepare a statement of adjustments and deliver same with all supporting documentation to the Purchaser for its approval by no later than three (3) business days prior to the Purchaser's Condition Date. If the amount of any adjustments required to be made pursuant to this Agreement cannot be reasonably determined by three (3) business days prior to the Purchaser's Condition Date, then, and only then: (i) an estimate shall be agreed upon by the Parties as of the Closing Date based upon the best information available to the Parties at such time, each Party acting reasonably; and (ii) the Parties shall enter into an agreement on

or prior to the Closing Date to readjust the adjustments within sixty (60) days after the Closing Date, which readjustment shall serve as a final determination.

- (2) Other than as provided for in this section 4.5, there shall be no adjustments to the Purchase Price.

ARTICLE 5 TAXES

5.1 Taxes.

- (1) The Purchaser is liable for and shall pay all land transfer tax, GST, other similar taxes and duties, fees in respect of the registration of the transfer, and other like charges properly payable by a purchaser upon and in connection with the sale, assignment and transfer of the Purchased Assets from the Receiver to the Purchaser.
- (2) The Purchaser agrees to self-assess, be liable for and, subject to Subsection 5.1(3), remit to the appropriate Governmental Entity all GST payable in connection with its purchase of the Real Property, and to indemnify the Receiver for any amounts for which the Receiver may become liable as a result of any failure by the Purchaser to pay the GST payable in respect of the sale of the Real Property under Part IX of the ETA. The Purchaser shall deliver, on or prior to Closing, a certificate and indemnity of the Purchaser in form acceptable to the Receiver, certifying (i) that the Purchaser is a registrant for GST under the ETA, its registration number, and that such registration is in good standing, (ii) that the Purchaser shall be liable for, shall self assess and shall remit to the appropriate Governmental Entity all GST payable in respect of the sale of the Real Property, and (iii) the Purchaser is purchasing the Real Property as principal for its own account and is not being purchased by the Purchaser as an agent, trustee, or otherwise on behalf of or for another Person, and the Purchaser's GST registration number. Such certificate shall also set out the indemnity provided for in the first sentence of this Subsection (2).
- (3) If the Purchaser is not an individual Person and delivers the GST certificate and indemnity as set out in Subsection 5.1(2), then the Purchaser will not be required to pay to the Receiver, and the Receiver will not be required to collect from the Purchaser, GST in respect of the Real Property. If the Purchaser is an individual Person or does not deliver the GST certificate and indemnity as set out in Subsection 1.1(2), then without limiting the generality of the foregoing in this paragraph, the Purchaser shall pay to the Receiver an amount equal to the GST payable on the Purchase Price allocated to the Real Property on Closing.
- (4) The indemnities in this Section 5.1 shall survive the Closing Date in perpetuity.

ARTICLE 6 CLOSING ARRANGEMENTS

6.1 Closing.

Closing shall take place at the Closing Time on the Closing Date or at such other time as the Parties may agree in writing.

6.2 Tender.

Any tender of documents or money under this Agreement may be made upon the Parties or their respective lawyers, and money shall be tendered by wire transfer of immediately available funds to the account specified by the receiving Party.

6.3 Receiver's Closing Deliverables.

The Receiver covenants to execute, where applicable, and deliver the following to the Purchaser at Closing or on such other date as expressly provided herein:

- (1) a copy of the issued Approval and Vesting Order and the attached Receiver's Certificate;
- (2) a statement of adjustments prepared in accordance with section 4.5 hereof;
- (3) an undertaking by the Receiver to readjust the adjustments set out in section 4.5 hereof;
- (4) an assignment and assumption agreement for all Permits and Contracts (to the extent assignable) relating to the period from and after the Closing Date, and to the extent not assignable, an agreement by the Receiver to hold same in trust for the Purchaser;
- (5) a certificate from the Receiver, dated as of the Closing Date, certifying:
 - (a) that, except as disclosed in the certificate, the Receiver has not been served with any notice of appeal with respect to the Approval and Vesting Order, or any notice of any application, motion or proceedings seeking to set aside or vary the Approval and Vesting Order or to enjoin, restrict or prohibit the Transaction;
 - (b) that all representations, warranties and covenants of the Receiver contained in this Agreement are true as of the Closing Time, with the same effect as though made on and as of the Closing Time; and
 - (c) the non-merger specified in section 14.2 and elsewhere herein; and
- (6) an acknowledgement, dated as of the Closing Date, that each of the conditions in section 7.1 hereof has been fulfilled, performed or waived as of the Closing Time.

6.4 Purchaser's Closing Deliverables.

The Purchaser covenants to execute, where applicable, and deliver the following to the Receiver at Closing or on such other date as expressly provided herein:

- (1) the indefeasible payment and satisfaction in full of the Purchase Price according to section 4.3 hereof;
- (2) an undertaking by the Purchaser to readjust the adjustments set out in section 4.5 hereof;
- (3) an acknowledgement, dated as of the Closing Date, that each of the conditions in section 7.3 hereof has been fulfilled, performed or waived as of the Closing Time;
- (4) an assignment and assumption agreement for all Permits and Contracts (to the extent assignable and to the extent that the Purchaser has agreed in writing prior to the expiry of the Purchaser's Condition Date) relating to the period from and after the Closing Date, and to the extent not assignable, an agreement to hold same in trust for the Purchaser, provided that the Purchaser has agreed in writing to accept assignment of such Contracts;
- (5) a certificate from the Purchaser, dated as of the Closing Date, certifying:
 - (a) that all representations, warranties and covenants of the Purchaser contained in this Agreement are true as of the Closing Time, with the same effect as though made on and as of the Closing Time; and
 - (b) the non-merger specified in section 14.2 and elsewhere herein;
- (6) if necessary, payment or evidence of payment of GST applicable to the Purchased Assets or, if applicable, appropriate tax exemption and indemnification certificates to the Receiver's satisfaction, acting reasonably, with respect to GST in accordance with Article 5 hereof; and
- (7) such further documentation relating to the completion of the Transaction as shall be otherwise referred to herein or required by the Receiver, acting reasonably, Applicable Law or any Government Authority.

6.5 Receiver's Certificate.

Upon receipt of written confirmation from the Purchaser that all of the conditions contained in section 7.3 have been satisfied or waived by the Purchaser, and upon satisfaction or waiver by the Receiver of all of the conditions contained in section 7.1, the Receiver shall forthwith deliver to the Purchaser the Receiver's Certificate comprising Schedule "A" of the Approval and Vesting Order, and shall file same with the Court.

6.6 Single Transaction.

All closing documents shall be delivered in trust on such reasonable trust conditions as are consistent with the terms of this Agreement and otherwise as would customarily be imposed in a similar transaction in the City of Calgary. It is a condition of Closing that all matters of payment, execution and delivery of documents by each party to the other shall be deemed to be concurrent requirements and it is specifically agreed that nothing will be complete at the Closing until everything required at the Closing has been paid, executed and delivered. The Purchaser, at its own cost, shall obtain an owners' policy of title insurance (and any necessary coverage required by the Purchaser's lender, if any) which will permit the release of funds on the Closing Date.

6.7 Registration and Other Costs.

The Purchaser shall bear all costs in registering any conveyances of title to the Purchased Assets to it and all costs of preparing any further assurances required to convey the Purchased Assets to it. The Purchaser shall register all such conveyances in accordance with this Agreement.

ARTICLE 7 CONDITIONS PRECEDENT TO CLOSING

7.1 Conditions in Favour of the Receiver.

The obligation of the Receiver to complete the Transaction is subject and conditional to the satisfaction of the following conditions on or before the Closing Date:

- (1) all the representations and warranties of the Purchaser contained in this Agreement shall be true and correct in all material respects on the Closing Date;
- (2) all the covenants of the Purchaser contained in this Agreement to be performed on or before the Closing Date shall have been duly performed by the Purchaser;
- (3) the Purchaser shall have complied with all the terms contained in this Agreement applicable to the Purchaser prior to the Closing Date;
- (4) there shall be no Claim, litigation or proceedings pending or threatened or order issued by a Governmental Authority against either of the Parties, or involving any of the Purchased Assets, for the purpose of enjoining, preventing or restraining the completion of the Transaction or otherwise claiming that such completion is improper; and
- (5) the Court shall have issued the Approval and Vesting Order.

7.2 Conditions in Favour of Receiver Not Fulfilled.

If any of the conditions contained in section 7.1 hereof is not fulfilled on or prior to the Closing Date and such non-fulfillment is not directly or indirectly as a result of any action or omission of the Receiver, then the Receiver may, at its sole discretion, and without limiting any rights or remedies available to it at law or in equity:

- (a) terminate this Agreement by notice to the Purchaser, in which event the Receiver shall be released from its obligations under this Agreement to complete the Transaction; or
- (b) waive compliance with any such condition without prejudice to the right of termination in respect of the non-fulfillment of any other condition.

7.3 Conditions in Favour of the Purchaser.

The obligation of the Purchaser to complete the Transaction is subject and conditional to the satisfaction of the following conditions on or before the Closing Date:

- (a) by not later than 5:00 p.m. on the Purchaser's Condition Date, the Purchaser shall have satisfied itself in its sole and unfettered discretion with respect to all matters relating to the Purchased Assets and shall have delivered notice in writing to the Receiver that its due diligence condition has been satisfied or waived;
- (b) all the representations and warranties of the Receiver contained in this Agreement shall be true and correct in all material respects on the Closing Date;
- (c) all the covenants of the Receiver under this Agreement to be performed on or before the Closing Date shall have been duly performed by the Receiver;
- (d) the Receiver shall have complied with all the terms contained in this Agreement applicable to the Receiver prior to the Closing Date;
- (e) there shall be no Claim, litigation or proceedings pending or threatened or order issued by a Governmental Authority against either of the Parties, or involving any of the Purchased Assets, for the purpose of enjoining, preventing or restraining the completion of the Transaction or otherwise claiming that such completion is improper; and
- (f) the Court shall have issued the Approval and Vesting Order.

7.4 Conditions in Favour of Purchaser Not Fulfilled.

If any of the conditions contained in section 7.3 hereof is not fulfilled on or prior to the Closing Date and such non-fulfillment is not directly or indirectly as a result of any action or omission of the Purchaser, then the Purchaser may, in its sole discretion:

- (a) terminate this Agreement by notice to the Receiver, in which event the Purchaser and the Receiver shall be released from their obligations under this Agreement to complete the Transaction; or
- (b) waive compliance with any such condition without prejudice to the right of termination in respect of the non-fulfillment of any other condition.

ARTICLE 8
REPRESENTATIONS & WARRANTIES OF THE RECEIVER

Except as otherwise stated below, the Receiver represents and warrants to the Purchaser as follows, with the knowledge and expectation that the Purchaser is placing complete reliance thereon and, but for such representations and warranties, the Purchaser would not have entered into this Agreement:

- (1) subject to the granting of the Approval and Vesting Order, (i) the Receiver has all necessary power and authority to enter into this Agreement and to carry out its obligations hereunder; (ii) the execution and delivery of this Agreement and the consummation of the Transaction have been duly authorized by all necessary action on the part of the Receiver; and (iii) this Agreement is a valid and binding obligation of the Receiver enforceable in accordance with its terms;
- (2) the Receiver has been duly appointed by the Court pursuant to the Receivership Order, with the full right, power and authority to enter into this Agreement, perform its obligations hereunder and convey the Purchased Assets;
- (3) the Purchased Assets as of the Closing Date will be free and clear of all Encumbrances other than the Permitted Encumbrances;
- (4) the Contracts listed in Schedule "D" are, based solely upon a review on the books and records of the Debtor by the Receiver, a list of the Contracts to which the Debtor is a party relating to the Business, the Purchased Assets and the Real Property. The Receiver does not represent or warrant:
 - (a) that the contracts listed in Schedule "D" represent a complete or accurate list of all Contracts to which the Debtor is a party relating to the Business, the Purchased Assets and the Real Property; and
 - (b) that there are no other oral or written agreements other than those listed on Schedule "D" that affect the use, ownership, operation or management of the Business, the Purchased Assets and the Real Property; and
- (5) the Receiver is not a non-resident of Canada for the purposes of the ITA.

ARTICLE 9
REPRESENTATIONS & WARRANTIES OF THE PURCHASER

The Purchaser represents and warrants to the Receiver as follows, with the knowledge and expectation that the Receiver is placing complete reliance thereon and, but for such representations and warranties, the Receiver would not have entered into this Agreement:

- (1) the Purchaser is a corporation duly formed and validly subsisting under the laws of the Province of Alberta;

- (2) the Purchaser has all necessary corporate power and authority to enter into this Agreement and to carry out its obligations hereunder. Neither the execution of this Agreement nor the performance by the Purchaser of the Transaction will violate the Purchaser's constating documents, any agreement to which the Purchaser is bound, any judgment or order of a court of competent jurisdiction or any Government Authority, or any Applicable Law. The execution and delivery of this Agreement and the consummation of the Transaction have been duly authorized by all necessary corporate action on the part of the Purchaser. This Agreement is a valid and binding obligation of the Purchaser enforceable in accordance with its terms;
- (3) either (i) the Purchaser is not a "**non-Canadian**", as defined in the *Investment Canada Act* (Canada) ("**ICA**"); or (ii) if the Purchaser is a "**non-Canadian**", this transaction is not a reviewable transaction under the ICA, *or*, if applicable, the Purchaser is a non-Canadian for the purpose of the ICA and will within three (3) Business Days of the execution of this Agreement submit to Investment Canada a fully completed Application for Review with respect to the transaction contemplated in this Agreement and will use its best efforts to obtain approval from Investment Canada prior to Closing;
- (4) the Purchaser is an GST registrant under the *Excise Tax Act* (Canada) and its GST registration number is 105640858 RT001; and
- (5) the Purchaser has not committed an act of bankruptcy, is not insolvent, has not proposed a compromise or arrangement to its creditors generally, has not had any application for a bankruptcy order filed against it, has not taken any proceeding and no proceeding has been taken to have a receiver appointed over any of its assets, has not had an encumbrancer take possession of any of its property and has not had any execution or distress become enforceable or levied against any of its property.

ARTICLE 10 COVENANTS

10.1 Mutual Covenants.

Each of the Receiver and the Purchaser hereby covenants and agrees that, from the date hereof until Closing, each shall take all such actions as are necessary to have the Transaction approved in the Approval and Vesting Order on substantially the same terms and conditions as are contained in this Agreement, and to take all commercially reasonable actions as are within its power to control, and to use its commercially reasonable efforts to cause other actions to be taken which are not within its power to control, so as to ensure compliance with each of the conditions set forth in Article 7 hereof.

10.2 Receiver Covenants.

The Receiver hereby covenants and agrees that, from the date hereof until Closing, it shall take all such reasonable actions as are necessary to provide to the Purchaser all necessary information in respect of the Purchased Assets reasonably required to complete, if necessary, the applicable tax elections in accordance with section 5.1 hereof and to execute all necessary forms related thereto.

10.3 Purchaser Covenants.

The Purchaser hereby covenants and agrees that, from the date hereof until the Closing Date, it shall take all such actions as are necessary to provide to the Receiver all necessary information in respect of the Purchaser reasonably required to complete, if necessary, the applicable tax elections in accordance with section 5.1 hereof and to execute all necessary forms related thereto.

ARTICLE 11 POSSESSION AND ACCESS PRIOR TO CLOSING

11.1 Possession of Purchased Assets.

At the Closing Time, the Purchaser shall take possession of the Purchased Assets where situated. In no event shall the Purchased Assets be sold, assigned, conveyed or transferred to the Purchaser until all the conditions set out in the Approval and Vesting Order have been satisfied or waived and the Purchaser has satisfied or the Receiver has waived all the delivery requirements outlined in section 7.1 hereof.

11.2 Examination of Title, Due Diligence and Access to the Purchased Assets.

- (1) The Purchaser acknowledges and agrees that it shall, at its own cost and expense (regardless of results), examine title to the Purchased Assets, and satisfy itself as to the state thereof, satisfy itself as to outstanding work orders affecting the Purchased Assets, satisfy itself as to the use of the Real Property being in accordance with applicable zoning requirements and satisfy itself that any and all buildings and structures on the Real Property, if any, may be insured to the satisfaction of the Purchaser. The Purchaser further acknowledges that, notwithstanding any statutory provisions to the contrary, the Purchaser has no right to submit requisitions in regard to any outstanding work orders, deficiency notices or orders to comply issued by any Government Authorities. The Purchaser further acknowledges and agrees that it shall not call upon the Receiver to produce any title deed, abstract of title, survey or other evidence of title that is not within the Receiver's possession or control.
- (2) The Purchaser and its agents and representatives may have reasonable access to the Real Property during normal business hours in the Interim Period for the purpose of enabling the Purchaser, at its sole cost and expense (regardless of results), to conduct such non-destructive, non-invasive inspections of the Real Property as it deems appropriate. The Purchaser agrees that such tests and inspections shall not include any tests or inspections by any Governmental Authority and specifically acknowledges and agrees that it shall not request or, through its actions, prompt or cause any tests or inspections to be made by any Governmental Authority. Such inspection may, if the Receiver so desires, be conducted in the presence of a representative of the Receiver and shall be done in such a manner as to minimize disruptions at the Real Property.
- (3) The Purchaser covenants and agrees to repair or pay the costs to repair any damage occasioned during or resulting from the inspection of the Property conducted by the Purchaser or its authorized representatives, as outlined above, and to return the Property

to substantially the condition same was in prior to such inspections. The Purchaser covenants and agrees to indemnify and save the Receiver harmless from and against all losses, costs, claims, third party claims, damages, expenses (including actual legal costs) which the Receiver may suffer as a result of the inspection of the Property conducted by the Purchaser or its authorized representatives, as outlined above.

- (4) The Purchaser shall have until 5:00 p.m. on the Purchaser's Condition Date to conduct its due diligence review in accordance with this Section 11.2, unless otherwise extended by written agreement of the Parties. The Purchaser shall have the right to terminate this Agreement for any reason, or no reason, at any time prior to 5:00 p.m. on the Purchaser's Condition Date. Upon such a termination, the Deposit shall be promptly returned to the Purchaser in accordance with Section 4.2(5).

11.3 Risk.

- (1) The Purchased Assets shall be and remain at the risk of the Receiver until Closing and at the risk of the Purchaser from and after Closing.
- (2) If, prior to Closing, the Purchased Assets are substantially physically damaged or destroyed by fire, casualty or otherwise, then, at its option, the Purchaser may decline to complete the Transaction. Such option shall be exercised within 15 calendar days after notification to the Purchaser by the Receiver of the occurrence of such physical damage or destruction (or prior to the Closing Date if such occurrence takes place within 15 calendar days of the Closing Date), in which event this Agreement shall be terminated automatically. If the Purchaser does not exercise such option, it shall complete the Transaction and shall be entitled to an assignment of any proceeds of insurance referable to such damage or destruction. Where any physical damage or destruction is not substantial, the Purchaser shall complete the Transaction and shall be entitled to an assignment of any proceeds of insurance referable to such physical damage or destruction. For the purposes of this section, substantial physical damage or destruction shall be deemed to have occurred if the physical loss or damage to the Purchased Assets exceeds 15% of the total Purchase Price (inclusive of the Deposit).
- (3) If, prior to the Closing Date, all or a material part of the Real Property is expropriated or a notice of expropriation or intent to expropriate all or a material part of the Real Property is issued by any Governmental Authority, the Receiver shall immediately advise the Purchaser thereof by Notice in writing. The Purchaser shall, by Notice in writing given within 3 Business Days after the Purchaser receives Notice in writing from the Receiver of such expropriation, elect to either: (i) complete the Transaction contemplated herein in accordance with the terms hereof without reduction of the Purchase Price, and all compensation for expropriation shall be payable to the Purchaser and all right, title and interest of the Receiver or the Debtor to such amounts, if any, shall be assigned to the Purchaser on a without recourse basis; or (ii) terminate this Agreement and not complete the Transaction, in which case all rights and obligations of the Receiver and the Purchaser (except for those obligations which are expressly stated to survive the termination of this Agreement) shall terminate, and the Deposit shall be returned to the Purchaser forthwith.

ARTICLE 12
AS IS, WHERE IS

12.1 Condition of the Purchased Assets.

The Purchaser hereby acknowledges and agrees with and to be subject to the following:

- (a) it is responsible for conducting its own searches and investigations of the current state of the Purchased Assets and the current and past uses of the Purchased Assets;
- (b) the Receiver makes no representation or warranty of any kind that the present use or future intended use by the Purchaser of the Purchased Assets is or will be lawful or permitted;
- (c) it is satisfied with the Purchased Assets and all matters and things connected therewith or in any way related thereto;
- (d) it is relying entirely upon its own investigations and inspections in entering into this Agreement;
- (e) it is purchasing the Purchased Assets on an “as is, where is” and “without recourse” basis in accordance with the terms hereof, including, without limitation, outstanding work orders, deficiency notices, compliance requests, development fee, imposts, lot levies, sewer charges, zoning and building code violations and any outstanding requirements which have been or may be issued by any governmental authority having jurisdiction over the Purchased Assets;
- (f) it relies entirely on its own judgment, inspection and investigation of the Purchased Assets;
- (g) any documentation relating to the Property or the Purchased Assets obtained from the Receiver or from the Receiver’s agents or representatives has been prepared or collected solely for the convenience of prospective purchasers and is not warranted to be complete or accurate and is not part of this Agreement;
- (h) the Receiver shall have no liability for, or obligation with respect to, the value, state or condition of the Purchased Assets;
- (i) the Receiver has made no representations or warranties with respect to or in any way related to the Property or the Purchased Assets, including without limitation, the following:
 - (i) the title, quality, quantity, marketability, zoning, fitness for any purpose, state, condition, encumbrances, description, present or future use, value, location or any other matter or thing whatsoever related to the Purchased Assets, either stated or implied; and

- (ii) the environmental state of the Real Property, the existence, nature, kind, state or identity of any Hazardous Materials on, under, or about the Real Property, the existence, state, nature, kind, identity, extent and effect of any administrative order, control order, stop order, compliance order or any other orders, proceedings or actions under the *Environmental Protection and Enhancement Act* (Alberta), or any other statute, regulation, rule or provision of law and the existence, state, nature, kind, identity, extent and effect of any liability to fulfill any obligation to compensate any third party for any costs incurred in connection with or damages suffered as a result of any discharge of any Hazardous Materials whether on, under or about the Real Property or elsewhere; and
- (j) it will ensure that any environmental and/or structural reports on behalf of the Purchaser shall also be addressed to the Receiver and a copy of each such report shall be delivered to the Receiver promptly after the completion thereof, regardless of whether the transaction contemplated by this Agreement closes. If for any reason such transaction is not consummated, the Purchaser agrees to deliver promptly to the Receiver any and all reports and other data pertaining to the Purchased Assets and any inspections or examinations conducted hereunder.

12.2 Encroachments.

The Purchaser agrees that the Receiver shall not be responsible for any matters relating to encroachments on or to the Real Property, or encroachments of the Real Property onto adjoining lands, or to remove same, or for any matters relating to any applicable zoning regulations or by-laws in existence now or in the future affecting the Real Property.

12.3 Indemnification.

The Purchaser shall indemnify and save harmless the Receiver and its directors, officers, employees, agents and representatives (collectively, the “**Indemnitees**”) from and against any and all liabilities, obligations, losses, damages, penalties, notices, judgments, suits, claims, demands, costs, expenses or disbursements of any kind or nature whatsoever which may be imposed on, incurred by or asserted against the Indemnitees or any of them arising out of or in connection with the operations of the Purchaser on the Purchased Assets or any order, notice, directive, or requirement under, or breaches, violations or non-compliance with any Environmental Laws after the Closing Date or as a result of the disposal, storage, release or threat of release or spill on or about the Property of any Hazardous Materials after the Closing Date. For the purposes of the foregoing, “**Environmental Laws**” shall mean all requirements under or prescribed by common law and all federal, provincial, regional, municipal and local laws, rules, statutes, ordinances, regulations, guidelines, directives, notices and orders from time to time with respect to the discharge, generation, removal, storage or handling of any Hazardous Materials. The obligations of the Purchaser hereunder shall survive the Closing.

12.4 Releases.

The Purchaser agrees to release and discharge the Receiver and its directors, officers, employees, agents and representatives from every claim of any kind that the Purchaser may make, suffer, sustain or incur in regard to any Hazardous Materials relating to the Property. The Purchaser further agrees that the Purchaser will not, directly or indirectly, attempt to compel the Receiver to clean up or remove or pay for the cleanup or removal of any Hazardous Materials, remediate any condition or matter in, on, under or in the vicinity of the Property or seek an abatement in the Purchase Price or damages in connection with any Hazardous Materials. This provision shall not expire with, or be terminated or extinguished by or merged in the Closing of the transaction of purchase and sale, contemplated by this Agreement, and shall survive the termination of this Agreement for any reason or cause whatsoever and the closing of this transaction.

ARTICLE 13 TERMINATION

13.1 Termination of this Agreement.

This Agreement may (or, in the case of section 13.1(7) below, shall) be validly terminated:

- (1) upon the mutual written agreement of the Parties;
- (2) pursuant to section 7.2 hereof by the Receiver;
- (3) pursuant to section 7.4 hereof by the Purchaser;
- (4) pursuant to section 11.2 and 11.3 hereof;
- (5) by either of the Parties, in writing to the other, if the Approval and Vesting Order is not issued by the Court on or before May 1, 2024, or such later date agreed to by the Parties, each in their sole discretion;
- (6) by either of the Parties, in writing to the other, if the Closing has not occurred on or before May 9, 2024, or such later date agreed to by the Parties, each in their sole discretion; or
- (7) automatically, should Closing have not occurred prior to the discharge of KSV as the Receiver, unless the Receiver's interest in this Agreement has been assigned prior to (or as part of) the Receiver's discharge.

13.2 Remedies for Breach of Agreement.

If this Agreement is terminated as a result of any breach of a representation, warranty, covenant or obligation of the Receiver under this Agreement, then the Deposit, without interest or deduction, shall be returned to the Purchaser forthwith (and, for greater certainty, and notwithstanding any other provision in this Agreement, this shall be the Purchaser's sole right and remedy as a result of the Receiver's breach). If this Agreement is terminated as a result of any

breach of a representation, warranty, covenant or obligation of the Purchaser under this Agreement, then the Deposit shall be forfeited to the Receiver as liquidated damages and not as a penalty, which Deposit the Parties agree is a genuine estimate of the liquidated damages that the Receiver would suffer in such circumstances (and, for greater certainty, and notwithstanding any other provision in this Agreement, this shall be the Receiver's sole right and remedy as a result of the Purchaser's breach).

13.3 Termination If No Breach of Agreement.

If this Agreement is terminated other than as a result of a breach of a representation, warranty, covenant or obligation of a Party, then:

- (1) all obligations of each of the Receiver and the Purchaser hereunder shall end completely, except those that survive the termination of this Agreement;
- (2) the Deposit, without interest or deduction, shall be returned to the Purchaser forthwith; and
- (3) neither Party shall have any right to specific performance, to recover damages or expenses or to any other remedy (legal or equitable) or relief.

ARTICLE 14 GENERAL CONTRACT PROVISIONS

14.1 Further Assurances.

From time to time after Closing, each of the Parties shall execute and deliver such further documents and instruments and do such further acts and things as may be required to carry out the intent and purpose of this Agreement and which are not inconsistent with the terms hereof.

14.2 Survival Following Completion.

Notwithstanding any other provision of this Agreement, section 4.5, article 8, article 9, section 13.2 and section 13.3 shall survive the termination of this Agreement and the completion of the Transaction, provided, however, that upon the discharge of KSV as the Receiver, the Receiver's obligations by reason of this Agreement shall end completely and it shall have no further or continuing obligations by reason thereof.

14.3 Notice.

All notices, requests, demands, waivers, consents, agreements, approvals, communications or other writings required or permitted to be given hereunder or for the purposes hereof (each, a "**Notice**") shall be in writing and be sufficiently given if personally delivered, sent by prepaid registered mail or transmitted by email, addressed to the Party to whom it is given, as follows:

- (a) to the Receiver:

KSV Restructuring Inc.

Suite 1165, 324 – 8th Avenue SW, Box 129
Calgary, Alberta T2P 2Z2
Attention: Jason Knight / Maha Shah
Email: jknight@ksvadvisory.com / mshah@ksvadvisory.com

and a copy to the Receiver's counsel to:

Cassels Brock & Blackwell LLP
Suite 3810, Bankers Hall West, 888 3rd Street SW
Calgary, AB T2P 5C5
Attention: Jeffrey Oliver
Email: joliver@cassels.com

(b) to the Purchaser:

Western Securities Limited
#310, 909 17th Avenue SW
Calgary, Alberta T2T 0A4
Attention: Ryan O'Connor
Email: ryano@westernsecurities.com

and:

Attention: Kris Hildebrand
Email: krish@westernsecurities.com

or such other address of which Notice has been given. Any Notice mailed as aforesaid will be deemed to have been given and received on the third Business Day following the date of its mailing. Any Notice personally delivered will be deemed to have been given and received on the day it is personally delivered, provided that if such day is not a Business Day, the Notice will be deemed to have been given and received on the Business Day next following such day. Any Notice transmitted by email will be deemed given and received on the first Business Day after its transmission.

If a Notice is mailed and regular mail service is interrupted by strike or other irregularity on or before the fourth Business Day after the mailing thereof, such Notice will be deemed to have not been received unless otherwise personally delivered or transmitted by email.

14.4 Waiver.

No Party will be deemed or taken to have waived any provision of this Agreement unless such waiver is in writing and such waiver will be limited to the circumstance set forth in such written waiver.

14.5 Consent.

Whenever a provision of this Agreement requires an approval or consent and such approval or consent is not delivered within the applicable time limit or the requirement for such consent is not required pursuant to the terms of the Approval and Vesting Order, then, unless otherwise specified, the Party whose consent or approval is required shall be conclusively deemed to have withheld its approval or consent.

14.6 Governing Law.

This Agreement will be governed by and construed in accordance with the laws of the Province of Alberta and the laws of Canada applicable therein. The Parties irrevocably attorn to the jurisdiction of the Court. The Parties consent to the exclusive jurisdiction and venue of the Court for the resolution of any disputes between them, regardless of whether or not such disputes arose under this Agreement.

14.7 Entire Agreement.

This Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements and understandings between the Parties. There are not and will not be any verbal statements, representations, warranties, undertakings or agreements between the Parties. This Agreement may not be amended or modified in any respect except by written instrument signed by the Parties. The recitals herein are true and accurate, both in substance and in fact.

14.8 Time of the Essence.

Time will be of the essence, provided that if the Parties establish a new time for the performance of an obligation, time will again be of the essence of the new time established.

14.9 Time Periods.

Unless otherwise specified, time periods within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends and by extending the period to the next Business Day following if the last day of the period is not a Business Day.

14.10 Assignment.

This Agreement will enure to the benefit of and be binding on the Parties and their respective heirs, executors, legal and personal administrators, successors and permitted assigns. The Purchaser may not assign this Agreement without the Receiver's prior written approval. Up until the granting of the Approval and Vesting Order, the Purchaser shall have the right to direct that title to the Purchased Assets be taken in the name of another person, entity, joint venture, partnership or corporation (presently in existence or to be incorporated) provided that the assignee shall, in writing, agree to assume and be bound by the terms and conditions of this Agreement (the "**Assumption Agreement**"), in a form acceptable to the Receiver, acting reasonably, and a copy of such Assumption Agreement is delivered to the Receiver forthwith after having been entered into, in which case the Purchaser shall be released from any and all further obligations and

liabilities hereunder. The Receiver covenants and agrees to deliver a full and final release and discharge in favour of the Purchaser upon the Purchaser's delivery of an executed Assumption Agreement other than in respect of the Deposit.

14.11 Expenses.

Except as otherwise set out in this Agreement, all costs and expenses (including, without limitation, the fees and disbursements of legal counsel) incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the Party incurring such costs and expenses.

14.12 Severability.

If any portion of this Agreement is prohibited in whole or in part in any jurisdiction, such portion shall, as to such jurisdiction, be ineffective to the extent of such prohibition without invalidating the remaining portions of this Agreement and shall, as to such jurisdiction, be deemed to be severed from this Agreement to the extent of such prohibition.

14.13 No Strict Construction.

The language used in this Agreement is the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party.

14.14 Cumulative Remedies.

Unless otherwise expressly stated in this Agreement, no remedy conferred upon or reserved to one or both of the Parties is intended to be exclusive of any other remedy, but each remedy shall be cumulative and in addition to every other remedy conferred upon or reserved hereunder, whether such remedy shall be existing or hereafter existing, and whether such remedy shall become available under common law, equity or statute.

14.15 Currency.

All references to dollar amounts contained in this Agreement shall be deemed to refer to lawful currency of Canada.

14.16 Receiver's Capacity.

It is acknowledged by the Purchaser that KSV is entering into this Agreement solely in its capacity as the Receiver and that KSV shall have absolutely no personal or corporate liability under or as a result of this Agreement in any respect.

14.17 No Third Party Beneficiaries.

This Agreement shall not confer any rights or remedies upon any Person other than the Parties and their respective successors and permitted assigns, nothing in this Agreement shall be construed to create any rights or obligations except amongst the Parties and no other person or entity shall be regarded as a third party beneficiary of this Agreement.

14.18 Number and Gender.

Unless the context requires otherwise, words importing the singular include the plural and vice versa and words importing gender include all genders. Where the word “including” or “includes” is used in this Agreement, it means “including (or includes) without limitation”.

14.19 Counterparts.

This Agreement may be executed in counterparts and by facsimile or PDF, each of which when so executed shall be deemed to be an original and such counterparts together shall constitute one and the same instrument.

14.20 Non-Registration.

The Purchaser hereby covenants and agrees not to register this Agreement or notice of this Agreement or a caution, certificate of pending litigation, or any other document, instrument or Court order or judgement providing evidence of this Agreement against title to the Real Property. Should the Purchaser be in default of its obligations under this Section, the Receiver may (as agent and attorney of the Purchaser) cause the removal of such notice of this Agreement, caution, certificate of pending litigation or other document providing evidence of this Agreement or any assignment of this Agreement from the title to the Real Property. The Purchaser irrevocably nominates, constitutes and appoints the Receiver as its agent and attorney in fact and in law to cause the removal of such notice of this Agreement, any caution, certificate of pending litigation or any other document or instrument whatsoever from title to the Real Property. The Purchaser acknowledges and agrees that the Receiver may rely on the terms of this Section 14.20 as a full estoppel to any proceeding, suit, claim, motion or other action brought by the Purchaser in order to obtain and attempt to register against the title to the Real Property any of the items set out in this Section 14.20.

[SIGNATURE PAGE FOLLOWS.]

IN WITNESS WHEREOF the Receiver has duly executed this Agreement as of the date first above written.


KSV RESTRUCTURING INC., solely in its capacity as the Court-appointed receiver and manager of the Property and not in its personal capacity or in any other capacity

DocuSigned by:

Per: _____
87E40B2D2D52401...
Name: Jason Knight
Title: Managing Director

ACCEPTED by the Purchaser as of the Effective Date.

WESTERN SECURITIES LIMITED

DocuSigned by:

Per: _____
8A8C030B7FC947B...
Name: Ryan O'Connor
Authorized Signing Officer

SCHEDULE A (APS) “Real Property”

Municipal Address: 159 210 Avenue SW in Calgary, Alberta

Legal Description:

PLAN 5235JK
BLOCK A
EXCEPTING THEREOUT ALL MINES AND MINERALS
AREA: 8.4 HECTARES (20.75 ACRES) MORE OR LESS

SCHEDULE B (APS)
“Approval and Vesting Order”

A form of AVO to be delivered to the Purchaser on or before the date that is not less than fifteen (15) days prior to the Purchaser’s Condition Date.

SCHEDULE C (APS)
“Permitted Encumbrances”

General Permitted Encumbrances

1. Encumbrances for property Taxes (which term includes charges, rates and assessments, and other governmental charges or levies) or charges for electricity, power, gas, water and other services and utilities in connection with any of the Real Property.
2. (a) any easements, rights of way, restrictive covenants and servitudes and other similar rights in land granted to, reserved or taken by any Governmental Authority, transit authority or public or private utility supplier or any subdivision, development, servicing, site plan or other similar agreement with any Governmental Authority, transit authority or public or private utility supplier; (b) any facility sharing, cost sharing, tunnel, servicing, parking, reciprocal and other similar agreements with neighbouring landowners and/or Governmental Authorities; and (c) any restrictive covenants, private deed restrictions and other similar land use controls or agreements.
3. Title defects or irregularities including any easements or rights of way in favour of any federal, provincial, municipal or other governmental bodies or regulatory authorities, any private or public utility, any railway company or any adjoining owner relating to the Real Property.
4. Any subsisting reservations, limitations, provisos, conditions or exceptions in any original grants from the Crown of any Real Property or any part thereof or interest therein.
5. The exceptions and reservations set forth in the *Land Titles Act* (Alberta) and reservations or exceptions of mines and minerals.
6. Any rights of expropriation, access, use or any other right conferred or reserved by or in any statute of Canada or Province of Alberta.
7. The provisions of Applicable Law including, without limitation, any bylaws, regulations, ordinances and similar instruments relating to development and zoning provided same are complied with in all material respects.
8. The rights reserved to or vested in any Governmental Authority by statutory provisions including the right to acquire portions of the Real Property for road widening or interchange construction, and the right to complete or remedy improvements, landscaping or deficiencies in any pedestrian walkways or traffic control or monitoring.
9. Undetermined or inchoate liens incidental to construction, renovations or current operations.
10. Any statutory liens, charges, adverse claims, prior claims, security interests, deemed trusts or other encumbrances of any nature whatsoever, claimed or held by His Majesty the King in Right of Canada, His Majesty the King in Right of the Province of Alberta or by any other Governmental Authority under or pursuant to any Applicable Laws.

Specific Permitted Encumbrances

1. 917KA Restrictive Covenant
2. 6453GC re Utility Right of Way in favor of Canadian Western Natural Gas Company.
3. 001 332 857 Caveat re Roadway in favor of the Minister of Infrastructure

SCHEDULE D (APS)
“Contracts”

Receiver to deliver list of Contracts to Purchaser within 7 days of the Effective Date.

SCHEDULE E (APS)
“Excluded Contracts”

Purchaser will confirm which, if any Contracts it will assume on or before the Purchaser's Condition Date.