

COURT FILE NUMBER

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COURT

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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
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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.

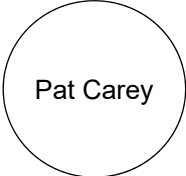
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All of which is respectfully submitted,

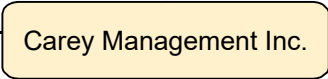
KSV Restructuring Inc.

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

Appendix “A”



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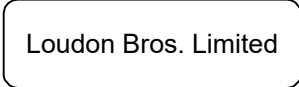
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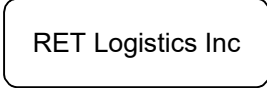
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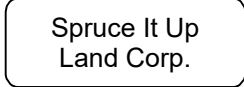
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Appendix “B”



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

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

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

DOCUMENT **AMENDED AND RESTATED INITIAL ORDER**

ADDRESS FOR SERVICE AND CONTACT
INFORMATION OF PARTY FILING THIS
DOCUMENT

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

Attention: James W. Reid / Larry Ellis

Telephone: 403.298.2418 / 416-595-8639

Fax: 403.262.0007

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

File No.: 0221652.0006

DATE ON WHICH ORDER WAS PRONOUNCED: June 30, 2023

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

LOCATION OF HEARING: Edmonton Law Courts

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

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

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

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

AND UPON hearing counsel for the Applicants, counsel for the Monitor, counsel for Canadian Imperial Bank of Commerce, counsel for Canadian Western Bank, and counsel for other interested parties;

AND UPON reviewing the Affidavit of Service of Marica Ceko sworn June 28, 2023;

IT IS HEREBY ORDERED AND DECLARED THAT:

SERVICE

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

APPLICATION

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

PLAN OF ARRANGEMENT

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

POSSESSION OF PROPERTY AND OPERATIONS

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

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

- (b) the reasonable fees and disbursements of any Assistants retained or employed by the Applicants in respect of these proceedings, at their standard rates and charges, including for periods prior to the date of this Order.

- 6. Except as otherwise provided to the contrary herein and subject to the terms of the Forbearance Agreement, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:
 - (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance, maintenance, and security services; and
 - (b) payment for goods or services actually supplied to the Applicants following the date of this Order.

- 7. The Applicants shall remit, in accordance with legal requirements, or pay:
 - (a) any statutory deemed trust amounts in favour of the Crown in Right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of:
 - (i) employment insurance,
 - (ii) Canada Pension Plan, and
 - (iii) income taxes,but only where such statutory deemed trust amounts arise after the date of this Order, or are not required to be remitted until after the date of this Order, unless otherwise ordered by the Court;
 - (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were

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

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

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

RESTRUCTURING

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

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

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

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

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

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

NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY

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

NO EXERCISE OF RIGHTS OR REMEDIES

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

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

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

NO INTERFERENCE WITH RIGHTS

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

CONTINUATION OF SERVICES

19. During the Stay Period, all persons having:

(a) statutory or regulatory mandates for the supply of goods and/or services; or

(b) oral or written agreements or arrangements with the Applicants, including without limitation all supply arrangements pursuant to purchase orders and historical supply practices, computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, services, utility or other services to the Business or the Applicants,

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

NON-DEROGATION OF RIGHTS

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

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

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

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

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

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

APPOINTMENT OF MONITOR

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

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

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

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

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

ADMINISTRATION CHARGE

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

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

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

CASH MANAGEMENT SYSTEM AND LENDER PRIORITY CHARGE

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

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

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

TOBACCO TAX CHARGE

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

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

VALIDITY AND PRIORITY OF CHARGES

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

to, or *pari passu* with, any of the Charges, unless the Applicants also obtain the prior written consent of the Monitor, CIBC, and the beneficiaries of the Charges, or further order of this Court.

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

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

ALLOCATION

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

SERVICE AND NOTICE

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

GENERAL

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

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



Justice of the Court of King's Bench of Alberta

Appendix “C”

COURT FILE NUMBER

2301 – 08305

COURT

COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE

CALGARY

APPLICANTS

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

COM

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

DOCUMENT

SECOND REPORT OF THE MONITOR
AUGUST 9, 2023

ADDRESS FOR
SERVICE AND
CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT

MONITOR

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

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MONITOR'S COUNSEL

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1.0 Introduction

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

1.1 CCAA Proceedings

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

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

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

1.2 Purposes of this Second Report

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

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

1.3 Scope and Terms of Reference

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

1.4 Currency

1. All currency references herein are in Canadian dollars.

2.0 Background

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

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

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

3.0 Update on the Applicants' Activities since the Filing Date

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

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

4.0 Monitor's Activities since the First Report

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

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

5.0 Liquidity Issues

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

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

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

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

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

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

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

6.0 Performance Against the Initial Cash Flow Forecast

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

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

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

7.0 Second Cash Flow Forecast

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

8.0 Conclusion

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

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

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

Appendix “D”

COURT FILE NUMBER **2301 – 08305**

COURT **COURT OF KING’S BENCH OF ALBERTA**

JUDICIAL CENTRE **CALGARY**

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

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

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

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

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MONITOR’S COUNSEL
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1.0 Introduction

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

2.0 Purpose

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

3.0 Update

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

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

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

Appendix “E”

COURT FILE NUMBER **2301 – 08305**

COURT **COURT OF KING’S BENCH OF ALBERTA**

JUDICIAL CENTRE **CALGARY**

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

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

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

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

1. Pursuant to an order (the “**Initial Order**”) issued by the Court of King’s Bench of Alberta (the “**Court**”) on June 22, 2023 (the “**Filing Date**”), Wallace & Carey Inc. (“**Wallace & Carey**”), Loudon Bros Limited (“**Loudon Bros**”, and together with Wallace & Carey, the “**Logistics Companies**”) and Carey Management Inc. (“**CMI**”, and together with the Logistics Companies, the “**Applicants**”) were granted protection under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), and KSV Restructuring Inc. (“**KSV**”) was appointed monitor of the Applicants (the “**Monitor**”). KSV is filing this report (the “**Fourth Report**”) as Monitor.

1.1 CCAA Proceedings

1. Pursuant to the terms of the Initial Order, *inter alia*, the Court:
 - a) granted a stay of proceedings in favour of the Applicants and their directors and officers to and including July 1, 2023 (the “**Stay Period**”);
 - b) approved the Applicants’ use of the centralized cash management system provided by Canadian Imperial Bank of Commerce (“**CIBC**” or the “**Lender**”) to the Applicants;
 - c) granted charges on the Applicants’ current and future assets, property and undertakings in the following amounts and priority:
 - i. first, a charge in the amount of \$250,000 in favour of the Applicants’ legal counsel (Miller Thomson LLP), the Monitor, and the Monitor’s legal counsel (Cassels Brock & Blackwell LLP), to secure the fees and disbursements of those firms (the “**Administration Charge**”);
 - ii. second, a charge in the amount of \$55 million plus interest, fees and expenses for all post-filing advances (the “**Lender Priority Charge**”) made by CIBC under the existing CIBC Credit Agreement (as defined in the Initial Order), as amended pursuant to the terms of the Forbearance Agreement dated June 22, 2023 (the “**Forbearance Agreement**”);
 - iii. third, a charge in the amount of \$3.33 million in favour of the directors and officers of the Applicants (the “**D&O Charge**”); and

- iv. fourth, a charge in the amount of \$18 million in favour of provincial and territorial authorities for amounts required to be remitted by the Logistics Companies under the *Tobacco Tax Act*, RSA 2000, c. T-4 or under any other applicable provincial legislation or laws (the “**Tobacco Tax Charge**”, and collectively with the Lender Priority Charge, the Administration Charge and the D&O Charge, the “**Initial Order Charges**”); and
 - d) permitted the Logistics Companies to pay certain pre-filing tobacco tax obligations pursuant to the Tobacco Tax Payment Plans (as defined in the Initial Order), subject to first obtaining the Monitor’s consent.
2. On June 30, 2023, the Applicants’ comeback application was heard and the Court granted:
 - a) an amended and restated Initial Order (the “**ARIO**”), attached hereto as **Appendix “A”**, which, among other things:
 - i. extended the Stay Period to and including September 20, 2023;
 - ii. increased the maximum amount of the Initial Order Charges, as follows:
 - Administration Charge to \$750,000;
 - D&O Charge to \$4 million; and
 - Tobacco Tax Charge to \$25 million; and
 - b) an Order providing for the Applicants’ continued access to certain fuel service cards, known as the Mobil Fleet Cards.
3. On August 9, 2023, the Monitor prepared and filed its second report to Court (the “**Second Report**”) which, among other things:
 - a) was drafted in the context of Section 23(1)(d)(i) of the CCAA, which requires the Monitor to file a report with the Court advising on the state of a company’s business and financial affairs upon ascertaining a material adverse change (a “**MAC**”) in the company’s projected cash flow or financial circumstances;
 - b) discussed challenges being faced by the Applicants and the efforts being taken at the time to address those challenges;

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

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

1.2 Purposes of this Fourth Report

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

1.3 Scope and Terms of Reference

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

1.4 Currency

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

2.0 Background

1. CMI is an Alberta corporation and the sole shareholder of Wallace & Carey, which is the sole shareholder of Loudon Bros. In addition to the Logistics Companies, CMI has ownership interests in nine subsidiaries, none of which are subject to these proceedings.
2. Wallace & Carey is an Alberta corporation that is extra-provincially registered to conduct business in most provinces and territories in Canada. Wallace & Carey operates from nine leased warehouses.
3. Loudon Bros, located in Thunder Bay, Ontario, is an Ontario corporation that is wholly owned by Wallace & Carey which until recently operated as its Northwestern Ontario branch. The Applicants are presently winding down the operations of Loudon Bros. Aspects of Loudon's business will be continued by Wallace & Carey from its other locations. All payroll and vacation pay amounts owing to Loudon Bros' employees have been, or will be, paid in full.
4. Through Wallace & Carey, the business continues to supply and distribute approximately 7,500 different products to several customers across the country. Wallace & Carey remains an important supplier to its customers, which depend on the continued operation of Wallace & Carey's business. 7-Eleven Canada Inc. ("**7-Eleven**") is the most significant customer of Wallace & Carey.
5. As of the Filing Date, the Logistics Companies employed approximately 600 full-time and 50 part-time employees. Wallace & Carey presently has approximately 600 employees. CMI has three employees, including Patrick Carey, the Chair, Daniel Elrod, the Chief Executive Officer, and an administrative employee.
6. CIBC provides CMI with a revolving asset-based loan (the "**CIBC Revolving Loan**") and term loan facility, which is guaranteed by the Logistics Companies and various other entities within the Carey corporate group (the "**CIBC Facility**"). As of the date of this Fourth Report, the amount owing under the CIBC Facility was approximately \$45.5 million. Pursuant to the terms of the Forbearance Agreement, all amounts owing to CIBC as of the Filing Date under the revolving portion of the CIBC Facility (being approximately \$38.54 million) have been repaid through accounts receivables collections, and all amounts advanced by CIBC since that time are secured by the Lender Priority Charge.

7. Affidavit No. 1 of Brian Birnie, Senior Vice President of Finance & Corporate Development of the Applicants, and Chief Financial Officer of Wallace & Carey, sworn June 21, 2023 in support of the initial CCAA application (the “**First Birnie Affidavit**”) provides, *inter alia*, background information concerning the Applicants, their respective businesses, as well as the reasons for the commencement of these proceedings. Affidavit No. 2 of Brian Birnie sworn on June 27, 2023 (the “**Second Birnie Affidavit**”) provides support for the relief sought by the Applicants at the Comeback Application. Affidavit No. 1 of Eric Rolheiser, President and CEO of Wallace & Carey sworn on August 21, 2023 (the “**First Rolheiser Affidavit**”) provides support for the relief sought by the Applicants at the August 23 Application.
8. KSV’s pre-filing report dated June 22, 2023 (the “**Pre-Filing Report**”) and the First Report provide additional background information about these proceedings. The First Report, Pre-Filing Report, Second Report, Second Report Supplement and Third Report are collectively referred to herein as the “**Previous Reports**”. Court materials filed in these proceedings, including this Fourth Report and Previous Reports, are available on the Monitor’s case website at www.ksvadvisory.com/experience/case/wallace-and-carey.

3.0 Liquidity Situation

1. Following the granting of the ARIO, the Applicants advised the Monitor that the Logistics Companies were required to enter into prepay arrangements with substantially all of their vendors for post-filing goods and services, rather than pay on cash on delivery (“**COD**”), which was the basis on which the Applicants’ first cash flow filed in these proceeding was prepared (the “**Initial Cash Flow Forecast**”). The pre-payment terms, which essentially continue to this day, impaired the Applicants’ liquidity due to the significant lead times associated with sourcing inventory from certain of the Applicants’ vendors. Under the terms of the CIBC Credit Facility, the Applicants were unable to borrow against this prepaid inventory until it was received by the Logistics Companies, which reduced the Logistics Companies’ borrowing capacity. This impaired the Logistics Companies’ ability to source fresh inventory on a continuous basis, which caused sales and cash receipts to vary negatively from the Initial Cash Flow Forecast. As a result, many of the Logistics Companies’ customers experienced lower fill rates than they required. These lower fill rates caused certain customers, including Cineplex Entertainment Limited Partnership, BCP IV Service Station Limited and Federated Co-operatives Limited, to terminate their relationship with the Logistics Companies.

2. On July 18, 2023, the Applicants and CIBC entered into an amendment agreement (the “**First Forbearance Amendment**”). Pursuant to the First Forbearance Amendment, CIBC provided certain accommodations to the Applicants to address the Applicants’ liquidity issues that resulted from the pre-pay terms referenced above. Among other things, the First Forbearance Amendment:
 - a) permitted “Eligible Undelivered Inventory” to be added to the Borrowing Base (both as defined in the First Forbearance Amendment) against which CIBC advances under the CIBC Credit Facility, provided that the Applicants received acknowledgements from the vendors that (i) they would not setoff the prepayment against amounts owing to them from the Applicants; and (ii) title to the relevant inventory transfers to the Applicants upon receipt of payment; and
 - b) required the Applicants to identify and select a financial advisor to conduct the SISF by no later than 40 days following the date of the hearing of the application for the Initial Order (i.e., by August 1, 2023).
3. In addition to the above accommodations from CIBC, the Applicants worked with suppliers to improve credit and other supply terms, including entering into consignment agreements and accelerated payment arrangements with certain tobacco suppliers, as well as accelerated payment terms with certain customers. The Monitor also facilitated certain transactions, including putting in place payment protection mechanisms so suppliers could supply on terms, as well as product delivery protections for customers who agreed to pay on an expedited basis.
4. Notwithstanding the foregoing efforts, the Applicants’ ongoing liquidity difficulties caused them to fail to comply with certain financial covenants under the Forbearance Agreement for the weeks ended July 22 and 29, 2023, including negative cash receipts variances, which were a default under the Forbearance Agreement.
5. As a result of the various defaults, on August 2, 2023, CIBC delivered to the Applicants a notice that certain Terminating Events (as defined in the Forbearance Agreement) had occurred and that CIBC was reserving all rights in respect of such (the “**August 2 Notice**”).

6. Following delivery of the August 2 Notice, CIBC issued a letter to the Applicants and the Monitor (the “**August 4 Letter**”) which, among other things, advised that:
 - a) CIBC was prepared to further amend the Forbearance Agreement; and
 - b) CIBC would continue to make the Revolving Loans (as defined in the Forbearance Agreement) available, subject to certain restrictions, until further written notice is delivered by CIBC to the Applicants (with a copy to the Monitor) and at least two business days following the delivery of the written notice has passed, during which time CIBC agreed to continue to fund Revolving Loans provided that such amounts shall not exceed that required for critical ordinary course post-filing operating expenditures that are due and payable and approved by the Monitor.
7. Notwithstanding the defaults, CIBC (i) continued funding the Applicants, in accordance with the lending formula prescribed in the Forbearance Agreement and the First Forbearance Amendment; and (ii) displayed a willingness to work with the Applicants to find solutions to their liquidity challenges.
8. As a result of negotiations among the Applicants, 7-Eleven, CIBC and the Monitor, the Applicants, 7-Eleven, and CIBC entered into a cash collateral agreement dated August 10, 2023 (the “**Cash Collateral Agreement**”) to increase the Applicants’ availability under the CIBC Facility. Under the Cash Collateral Agreement, the parties agreed to the following key terms:
 - a) 7-Eleven would provide \$9 million (the “**Cash Collateral**”) to be held by CIBC;
 - b) upon receipt by CIBC of the Cash Collateral, CIBC would promptly (i) increase the borrowing base under the CIBC Facility by an amount equal to the Cash Collateral, and (ii) increase the borrowing base under the CIBC Facility by not less than \$2 million by¹:
 - i. removing and revoking the \$1.5 million Excess Availability requirement under Section 4.1(k) of the Forbearance Agreement; and
 - ii. making certain borrowing base adjustments;

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

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

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

"notwithstanding the Existing Terminating Events, Revolving Loans shall continue to be made under the terms of the Credit Agreement and the Forbearance Agreement until further written notice (the "Notice") is delivered by the Agent to the Borrower (with a copy to the Monitor) and at least two business days following the delivery of

the Notice have passed. For certainty, the Notice may be delivered by the Agent in its sole discretion. Revolving Loans made available until delivery of such Notice shall be made solely for the purposes set out in Borrowing Requests approved by the Agent and in accordance with a cash flow forecast acceptable to the Agent. During the two-business day period following delivery of the Notice any Revolving Loans shall not exceed amounts required for critical ordinary course post-filing operating expenditures that are due and payable and approved by the Monitor.”

4.0 Updated Cash Flow Forecast

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

5.0 SISP

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

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

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

5.1 SISP Update

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

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

6.0 Conclusion

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

* * *

All of which is respectfully submitted,



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

Appendix “F”

C100655



COURT FILE NUMBER

2301 – 08305

COM
Nov. 3, 2023

COURT

COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE

CALGARY

APPLICANTS

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

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

DOCUMENT

**SUPPLEMENT TO THE FOURTH REPORT OF THE MONITOR
OCTOBER 6, 2023**

ADDRESS FOR
SERVICE AND
CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT

MONITOR

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

ENTERED

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1.0 Introduction

1. This Report (the “Supplemental Report”) supplements the Fourth Report.
2. Defined terms in this Supplemental Report have the meaning provided to them in the Fourth Report, unless otherwise defined herein. This Supplemental Report is subject to the scope and terms of reference in the Fourth Report. A copy of the Fourth Report is attached as Appendix “1”, without attachments.

1.1 Purposes of this Supplement Report

1. The purposes of this Supplemental Report are to:
 - a) provide the Court and stakeholders with an update on the Applicants’ cash flow projection to December 2, 2023, being the date that the Applicants’ stay of proceedings currently expires;
 - b) file an updated cash flow projection with the Court (the “Second Revised Cash Flow Forecast”) for the period October 1 to December 2, 2023 (the “Forecast Period”); and
 - c) provide an update on the SISP.

2.0 Update

1. The Applicants’ liquidity challenges have been discussed in certain of the Monitor’s prior reports filed in these proceedings, including its Second Report and Fourth Report, both of which were filed 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 after ascertaining a material adverse change in a company’s projected cash flow or financial circumstances. The Monitor’s prior reports have also advised of the additional financial and other support provided to the Applicants in these proceedings by certain of its most significant stakeholders, including CIBC, the Applicants’ largest creditor and secured lender, and 7-Eleven, the Applicants’ largest customer, by far.

2. The Fourth Report advised that the Applicants finalized a cash flow forecast on September 13, 2023 that reflected that they are not projected to have sufficient liquidity under the CIBC Revolving Loan to fund all forecasted disbursements in the ordinary course, unless the Logistics Companies deferred payment of Accrued Tobacco Taxes¹.
3. Since the date of the Fourth Report, the Applicants, with the assistance of the Monitor, have engaged in discussions and communications with the tax authorities of certain Provinces. In this regard, Wallace & Carey was recently advised by representatives of the Province of Alberta's tax collection department that it is required as of October 1, 2023 to pay tobacco tax at the time of purchase of tobacco products which are to be sold in the Province of Alberta. Prior to this change, Wallace & Carey was permitted to collect tax on its sales of tobacco products in Alberta, which taxes it was required to remit to the Province of Alberta.

3.0 Second Revised Cash Flow Forecast

1. The Fourth Report discussed that the Applicants were preparing the Second Revised Cash Flow Forecast and that the Monitor intended to file a supplemental report when it is available. The Second Revised Cash Flow Forecast was finalized on October 6, 2023. A copy of the Second Revised Cash Flow Forecast is attached as Appendix "2". The Second Revised Cash Flow Forecast reflects the following:
 - a) a reduction in projected revenue to reflect the loss of several of Wallace & Carey's customers since the commencement of these proceedings;
 - b) discontinuation of the Loudon business, which was recently completed;
 - c) discussions with provincial tax authorities, including, but not limited to, the change in the Logistics Companies' tax collection status in the Province of Alberta;
 - d) collection of accounts receivable and vendor obligations in the normal course; and

¹ Includes unpaid pre- and post-filing tobacco taxes, which were estimated to be \$32 million in the Fourth Report.

Appendix “G”

1.0 A&M CF OVERVIEW

1.1 Alvarez & Marsal Canada Securities ULC (“**A&M CF**”) is the Canadian corporate finance and investment banking arm of Alvarez & Marsal, a global professional services firm and provider of corporate advisory services. Founded in 1983, Alvarez & Marsal is headquartered in New York City with more than 70 offices across North America, Europe, the Middle East, Asia, and Latin America. Alvarez & Marsal provides a variety of corporate and financial advisory services, including turnaround management, corporate restructuring, investment banking and operational performance improvement for companies and its stakeholders.

1.2 A&M CF has extensive experience in investment banking, mergers, acquisitions, refinancing and other corporate finance transactions.

2.0 APPOINTMENT OF SALES ADVISOR

2.1 Pursuant to the Order of the Honourable Justice G.A. Campbell of the Alberta Court of King’s Bench (the “**Court**”) issued June 22, 2023 (as may be amended or amended and restated from time to time, the “**Initial Order**”) Carey Management Inc. and certain of its subsidiaries, including Wallace & Carey, Inc. (“**Wallace & Carey**”) and Loudon Bros Limited, (together with Carey Management Inc., and Wallace & Carey the “**Companies**”) were granted relief in proceedings commenced by the Vendors (the “**CCAA Proceedings**”) pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c.C-36, as amended (the “**CCAA**”), and KSV Restructuring Inc. was appointed as the Monitor of the Companies(the “**Monitor**”).

- 2.2 On August 23, 2023, the Companies sought and obtained within the CCAA Proceedings an order of the Court (the “**SISP Order**”) approving, among other things, a sale and investment solicitation process (“**SISP**”).
- 2.3 As a condition of the Cash Collateral Letter of Agreement (the “**Cash Collateral Agreement**”) between 7-Eleven Canada, Inc. (“**7-Eleven**”), Wallace & Carey, and Canadian Imperial Bank of Commerce (“**Lender**”) dated August 10, 2023, A&M CF was engaged by Wallace & Carey on August 13, 2023 as its financial advisor.
- 2.4 On August 23, 2023, the Court further granted an ancillary order, among other things, approving the engagement of A&M CF as financial advisor of the Companies. The SISP Order also authorized and directed, the Companies and A&M CF, in consultation with the Monitor, to conduct the SISP.

3.0 SALES PROCESS OVERVIEW

- 3.1 Pursuant to the SISP, A&M CF, in coordination with the Monitor and in consultation with the Lender, assisted the Companies in pursuing one or more or any combination of: (i) a restructuring, recapitalization or other form of reorganization of the business as a going concern; (ii) a sale of all, or substantially all, of the Companies’ business and operations and/or property as a going concern or otherwise; or (iii) other forms of business combination and asset sales (a “**Transaction**”).
- 3.2 A summary of the SISP is described below:
- (i) In connection with the commencement of the SISP, A&M CF, in consultation with the Monitor, undertook a comprehensive assessment of the market for the

Companies' business to identify potential lenders, purchasers or investors that might be interested in considering a Transaction. A&M CF, together with Wallace & Carey's executive management and the Companies' legal advisors, Miller Thomson LLP ("**Miller Thomson**"), and in consultation with the Monitor, identified 190 prospective parties to contact and participate in the SISP, including both financial and strategic parties located in Canada, the United States and internationally (the "**Prospective Parties**").

- (ii) The Prospective Parties were identified based on specific criteria, including but not limited to parties that had: (i) approached either the Companies, Monitor or Lender indicating an interest in a Transaction; (ii) expressed interest or established investments within the food and non-food distribution industries; (iii) demonstrated financial capability to complete a Transaction; (iv) experience in distressed and/or special situation transactions; and (v) an ability to execute a Transaction within an expedited timeline.
- (iii) A&M CF, in consultation with the Companies and the Monitor, prepared a non-disclosure agreement (the "**NDA**") in form and substance satisfactory to the Company, 7-Eleven and the Monitor.
- (iv) A&M CF, in collaboration with Wallace & Carey's executive management and in consultation with the Monitor, worked to populate an online data room and prepare a confidential information memorandum (the "**CIM**") for parties to review upon the execution of an NDA. The CIM provided an overview of, and significant detail about, the Companies' business, historical and forecast financial information, the

Canadian wholesale distribution industry and other relevant information. A&M CF also prepared a teaser document (the “**Teaser**”) to send to Prospective Parties to generate interest in a transaction.

- (v) The SISP was structured as a two-phase process. The first phase (“**Phase 1**”) involved contacting Prospective Parties, facilitating initial due diligence and access to the CIM and a preliminary data room and culminated in the receipt by Wallace & Carey of non-binding letters of intent (“**LOIs**”) for the purchase of, or investment in, all or part of the Companies' business and assets.
- (vi) The second phase of the SISP (“**Phase 2**”) involved providing access to additional due diligence and to a more robust data room, and meetings with Wallace & Carey's executive management and the review of a template form of asset purchase agreement that was recommended to be used for the purpose of submitting an offer in respect of a proposed Transaction.
- (vii) The Lender was supportive of the development and implementation of the SISP and was regularly updated on its progress through scheduled update calls, typically held on a weekly basis. These calls involved their financial and legal advisors, as well as the Monitor.
- (viii) As per the Cash Collateral Agreement, 7-Eleven was provided certain rights in the SISP, including the exclusive right to submit a stalking horse bid. As a result, A&M CF conducted weekly calls with 7-Eleven and the Monitor to explore 7-Eleven's interest in submitting a stalking horse bid. After 7-Eleven indicated their intention to submit an LOI instead of a stalking horse bid, these calls transitioned into weekly

general update sessions on Wallace & Carey, in addition to addressing any pending due diligence inquiries.

- (ix) The timeline proposed in connection with the SISP is consistent and similar to such timelines used in SISPs undertaken within a CCAA process. The table below summarizes the key dates and milestones approved by the Court:

SISP	Date	Days (Cumulative)
Phase 1		
Commencement of the SISP	August 30, 2023	43
Phase 1 due diligence	August 30 to October 5	
Provide Phase 1 Process Letter	September 22	
Phase 1 LOI bid date	October 5	
Phase 2		
Phase 2 due diligence	October 6	60 (103)
Phase 2 bid deadline	November 2	
Target closing date	On or before December 4	

Phase 1

- (x) The SISP commenced August 30, 2023. A&M CF: (a) provided Prospective Parties with the Teaser containing information about the Companies to solicit interest in the opportunity; (b) held discussions, upon request, with representatives of Prospective Parties to provide further details regarding the business and the transaction opportunity; and (c) invited interested parties to execute an NDA to obtain additional information about the Companies and opportunity.

- (xi) During Phase 1, A&M CF reached out to a total of 190 Prospective Parties. This group included 12 lending institutions, 141 private equity firms, and 37 strategic parties.
- (xii) Forty seven Prospective Parties executed an NDA, received the CIM and were granted access to an electronic data room (the “**Interested Parties**”). Among the Interested Parties, five were lenders, 32 were private equity firms, and 10 were strategic parties.
- (xiii) The electronic data room, established by A&M CF with assistance from Wallace & Carey’s executive management and the Monitor, included information regarding the Companies’ financial performance, customer base, key performance indicators, working capital, and financial projections.
- (xiv) On or about September 17, 2023, A&M CF was notified by the Monitor about the Companies’ severe liquidity challenges. A&M CF was encouraged to expedite the SISP process and concentrate on engaging with the strategic entities familiar with the Companies, particularly those well-positioned to act promptly, including 7-Eleven. On September 19, 2023, the Fourth Report of the Monitor was filed, outlining the Companies’ constrained liquidity position.
- (xv) On September 22, 2023, Interested Parties were provided with a Phase 1 Process Letter (the “**Phase 1 Letter**”) which contained instructions for submitting an LOI as soon as possible (in response to the Fourth Report of the Monitor) or no later than 5:00pm Mountain Time on October 5, 2023 (the “**Phase 1 Bid Deadline**”). A copy of the Phase 1 Letter is attached hereto as **Exhibit "A"**.

- (xvi) A&M CF and Wallace & Carey executive management worked diligently with Interested Parties throughout this period to respond to inquiries, discuss the Companies' business and current operations and address diligence matters to ensure that the Interested Parties had the information necessary to formulate an LOI in respect of a potential Transaction involving the Companies.
- (xvii) In an effort to expedite the SISP process, A&M CF facilitated meetings with 7-Eleven and/or Wallace & Carey executive management.
- (xviii) On September 25, 2023, upon request from an Interested Party, A&M CF organized and facilitated a meeting with 7-Eleven. Furthermore, A&M CF coordinated and conducted management presentations with two Interested Parties on September 26th and 29th.
- (xix) A&M CF provided regular updates on activities being undertaken pursuant to the SISP to various stakeholders including: (i) the Wallace & Carey executive team and their legal counsel, Miller Thomson, through update calls scheduled twice weekly; (ii) the Monitor through weekly ad hoc update calls; (iii) the Lenders and their advisors through weekly update calls; and (iv) 7-Eleven through weekly update calls (as noted above).
- (xx) On October 1, 2023, in advance of the Phase 1 Bid Deadline, A&M CF received a draft proposal from 7-Eleven outlining the principal terms of a proposed Transaction to acquire specific assets of the Companies including working capital assets, real estate and certain fixed assets. The proposal also contemplated a transition services agreement (“TSA”) between 7-Eleven and Wallace & Carey for

up to 18 months. During this period, Wallace & Carey would continue to provide logistics services to 7-Eleven's retail network as 7-Eleven explored the possibility of transitioning its retail distribution to third-party logistics providers ("3PL").

(xxi) On or before the Phase 1 Bid Deadline, A&M CF received four LOIs from Interested Parties (the "**Non 7-Eleven Parties**"), as summarized below:

- (a) A&M CF received two LOIs from private equity firms with experience in the distribution industry and expertise in distressed sale processes. These LOIs proposed to acquire all or substantially all of the Companies assets as a going concern.
- (b) Additionally, one LOI was submitted by a strategic party with the intent to acquire and assume specific assets and liabilities of the Companies.
- (c) Lastly, an LOI was received from an alternative lender, indicating their interest in providing the necessary funding to support a potential Transaction involving a strategic or private equity acquirer.
- (d) A table summarizing each of the four LOIs received, along with 7-Eleven's proposal, during Phase 1 is attached herewith as **Confidential Exhibit "B"**, for which a Sealing Order is being sought. The Phase 1 summary of LOIs contains sensitive commercial information and the availability of this information, if disclosed, may have a negative impact on potential recoveries, as it could affect 7-Eleven's ability to transition its retail distribution to 3PL providers.

- (xxii) All four LOIs, along with 7-Eleven's proposal were shared and discussed with Wallace & Carey's executive management, their legal counsel, the Monitor and the Lender.
- (xxiii) A&M CF and the Companies, alongside the Monitor, the Lender, and their advisors, conducted a comprehensive review of the non-binding offers received. Significant consideration was given to the Companies' urgent liquidity challenges, and the need for an expeditious Transaction closing.
- (xxiv) Upon review of the non-binding offers received, it was determined that the proposal from 7-Eleven offered the highest recovery to all stakeholders including an expectation of fully recovering the Lender's secured debt and distributions related to charges provided to other stakeholders pursuant to the ARIO and the Ancillary Order (each as defined in the Monitor's Sixth Report), including the Provinces and Territories under the "Tobacco Tax Charge", and represented the best option in respect of certainty to close, and ability to complete the proposed Transaction promptly and efficiently. As the Companies' largest customer, 7-Eleven was highly concerned about maintaining the continuity of its supply chain and was uniquely positioned to quickly understand the Companies' business and liquidity challenges. In addition, the LOIs from the Non-7-Eleven Parties would have required a significantly extended due diligence timeframe, contingent on the successful negotiation of a long-term commercial agreement with 7-Eleven, and would have resulted in a lower recovery for all stakeholders compared to what was proposed by 7-Eleven.

(xxv) Based on the foregoing factors and due to the need for an expeditious closing of the Transaction, it was agreed between A&M, the Companies and the Monitor to fast-track Phase 2 of the SISP, and focus on working towards finalizing binding transaction documentation, including an Asset Purchase Agreement (“**APA**”), with 7-Eleven.

Phase 2

(xxvi) During the expedited Phase 2, A&M CF and the Wallace & Carey executive team continued to work with 7-Eleven to address due diligence requests, facilitate on-site warehouse visits, arrange calls between 7-Eleven and Companies’ management, and provide other necessary information as requested.

(xxvii) On November 17, 2023, the binding transaction documents including the APA, were fully executed by the Company and 7-Eleven, as summarized in **Exhibit “C”** attached herewith.

(xxviii) The transaction documents were the product of a thorough and robust canvassing of the market and a competitive process. The purchase price, including the purchase price for the Companies’ owned real property in Kelowna and Calgary (the “772 Real Property”), and other consideration set out in the APA, followed extensive arms-length negotiations and thorough due diligence, is reflective of current market conditions and is the best indication of the market value of the Companies’ business and operations. The 772 properties were outlined in the CIM, and the purchase price was determined through (i) the highest bid secured through an arm's length process conducted by a commercial real estate agent for the Kelowna property and

(ii) an estimate of value based on an appraisal that was updated to reflect the current market value for the Calgary property, which the Companies had sourced.

Exhibit A Phase 1 Letter



Alvarez & Marsal Canada Securities ULC
Royal Bank Plaza, South Tower
200 Bay Street, Suite 2600, P.O. Box 22
Toronto, ON M5J 2J1
Phone: +1 416 847 5200
Fax: +1 416 847 5201

CONFIDENTIAL

September 22, 2023

Re: Wallace & Carey Inc. – Phase One Submission of Non-Binding Letter of Interest

We appreciate your continued interest in exploring a potential transaction with Wallace & Carey Inc., Loudon Bros Limited, and Carey Management Inc. (collectively, “Wallace & Carey”). As you are aware, pursuant to an order issued by the Court of King’s Bench of Alberta on June 22, 2023, Wallace & Carey was granted protection under the *Companies’ Creditors Arrangement Act* (the “CCA”), and KSV Restructuring Inc. (“KSV”) was appointed as monitor (the “Monitor”). On August 23, 2023, the Court approved the Sale and Investor Solicitation Process (“SISP”) to solicit interest in, and opportunities for, a sale of, or investment in, all or part of Wallace & Carey’s business and operations. Alvarez & Marsal Canada Securities ULC (“A&M”) was engaged by Wallace & Carey as financial advisor to conduct the SISP.

The purpose of this letter is to communicate information regarding next steps in connection with the ongoing SISP. A copy of the SISP is attached for your reference.

Pursuant to your execution of a non-disclosure agreement (the “NDA”) with Wallace & Carey, you have been provided certain confidential information with respect to the operations and financial performance of Wallace & Carey. Interested parties wishing to pursue a transaction are being asked to prepare and submit a non-binding Letter of Interest (“LOI”) in accordance with the deadline below.

Following receipt of LOIs, it is anticipated that one or a limited number of parties (the “Phase 2 Qualified Bidders”) will be selected to participate in the second phase (“Phase 2”) of the SISP based on a variety of factors, including valuation, transaction structure, closing conditions and ability to close in an expeditious manner. Prior to selecting parties to participate in Phase 2, A&M may seek clarification of the information provided in the LOIs.

Pursuant to the SISP, we ask that you please submit your LOI to A&M as soon as possible, but in no event later than **5:00pm Calgary time on Thursday, October 5, 2023** (“Phase 1 Bid Deadline”). You are requested to send your LOI by email, to the attention of:

Hugh Rowan-Legg
Managing Director
hrowanlegg@alvarezandmarsal.com

Josh Nevsky
Managing Director
inevsky@alvarezandmarsal.com

Justin Sim
Senior Director
jsim@alvarezandmarsal.com

Xavier Luk
Associate
xluk@alvarezandmarsal.com

Your LOI must be signed by a senior officer with the authority to submit such an LOI. Your LOI should reflect the best and most attractive basis upon which you would make an offer based on the information available to you and should include, in reasonable detail, the following:

1. *Structure*: Provide a description of the proposed transaction structure, including an indication that your offer is to: (a) acquire all, substantially all or portions of Wallace & Carey’s assets or shares, including a description of such assets or shares to be purchased and, liabilities (if any)

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from time to time. No finder's fees, commissions, expenses or other compensation will be paid by Wallace & Carey, its affiliates or its advisors to agents, consultants, advisors or other intermediaries of any party. A&M and Wallace & Carey reserve the right to amend any information which has been made available to interested parties whether by way of addition, deletion, amendment or otherwise.

A&M, in consultation with the Monitor, will evaluate LOIs received and may select one or a short list of candidates who will constitute Phase 2 Qualified Bidders and be invited to proceed to Phase 2. Further information will be forwarded to Phase 2 Qualified Bidders, which will include details on completing your due diligence and instructions for submitting final, binding proposals. Phase 2 participants should be prepared to immediately begin any remaining due diligence and to complete their review expeditiously.

Subject to the terms of the SISP, A&M and Wallace & Carey will not be under any obligation to review, consider or accept any offer that you may submit. Subject to the terms of the SISP, A&M reserves the right, at its sole discretion and without liability to change, suspend or terminate the procedures outlined above at any time and in any respect, and to reject any and all proposals and to terminate negotiations and discussions at any time and for any reason, without being obliged to give any reasons, with any or all potential purchasers and to negotiate with any party in any manner and to a timetable that may be different to that outlined in this letter. You acknowledge and accept that neither A&M nor Wallace & Carey has made any commitment or otherwise incurred any obligation to consider or conclude any transaction with you, and that both A&M and Wallace & Carey remain free to conclude such a transaction at any time with any person without notice to you or to other potential purchasers, or to withdraw or terminate the transaction contemplated by this letter at any time and will have no liability to you for damages or other compensation in relation to any such actions or in relation to the rejection of any offer of any kind at any time. You acknowledge and agree that, except as may be later agreed in writing with you in a legally binding definitive agreement executed by you and Wallace & Carey with respect to the transaction, all costs, expenses or other liabilities that you or any of your affiliates, agents, representatives or advisers may incur in connection with your LOI or the transaction contemplated by this letter shall be entirely for your own account and that neither A&M nor Wallace & Carey will have any liability to you in respect of such costs, expenses or other obligations or liabilities.

Pursuant to the NDA, under no circumstances are you permitted to contact any of Wallace & Carey's executives, employees, directors, shareholders, affiliates, lenders, customers, suppliers, vendors or service providers with respect to any transaction unless consented to by A&M, nor to disclose the potential transaction or this process to any third parties. All communications or inquiries regarding the process or any other matters relating to this letter should be directed to A&M.

We appreciate your interest and look forward to receiving your LOI.

Yours truly,



Name: Hugh Rowan-Legg
Title: Managing Director

Confidential Exhibit B
Phase 1 LOIs Received

Exhibit C
Phase 2 Final Bid Received

Bidder	Form of Bid	Valuation
7-Eleven Canada Inc.	<ul style="list-style-type: none">• Asset Purchase Agreement (APA)	<ul style="list-style-type: none">• 100% value of 7-Eleven accounts receivables and inventory estimated to be approximately \$27 million in aggregate, with approximately \$16 million payable upfront and the balance of the amount subject to a true-up adjustment post-close• 772 Real Property in Kelowna and Calgary for total purchase price of \$14.9 million• Additional fixed assets, equipment, IT and intellectual property for a total purchase price of \$4.5 million