

COURT FILE NUMBER

25-2038923

COURT

COURT OF QUEEN'S BENCH OF ALBERTA,
IN BANKRUPTCY

JUDICIAL CENTRE

CALGARY

IN THE MATTER OF THE *BANKRUPTCY*
AND INSOLVENCY ACT

AND IN THE MATTER OF THE
BANKRUPTCY OF
APACHE SUPERIOR PRINTING LTD.

DOCUMENT

FIRST REPORT OF THE TRUSTEE,
HARDIE & KELLY INC.
SEPTEMBER 28, 2015

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS
DOCUMENT

BENNETT JONES LLP
Barristers and Solicitors
4500, 855 - 2nd Street SW
Calgary, Alberta T2P 4K7

Attention: Chris Simard/Jennie Buchanan
Telephone No.: 403-298-4485/3130
Fax No.: 403-265-7219
Client File No.: 58368.9

**FIRST REPORT OF THE TRUSTEE
HARDIE & KELLY INC.
SEPTEMBER 28, 2015**

INDEX

INTRODUCTION	1
TERMS OF REFERENCE	1
BACKGROUND	1
ASSETS AND LIABILITIES.....	2
ACTIVITIES OF THE TRUSTEE.....	3
PURCHASE AND SALE AGREEMENT	5
RECOMMENDATIONS.....	11

APPENDICES

TPL Asset Purchase Agreement	A
------------------------------------	---

INTRODUCTION

1. On September 23, 2015, Apache Superior Printing Ltd. (“**Apache**” or the “**Company**”) filed an assignment in bankruptcy pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “**BIA**”) with Hardie & Kelly Inc. appointed as trustee (the “**Trustee**”) of the bankrupt estate pending affirmation at the first meeting of creditors.
2. The purpose of this report (the “**First Report**”) is to provide information to this Honourable Court with respect to the following:
 - (a) the background of the Company;
 - (b) details surrounding the material assets and liabilities of the Company;
 - (c) the activities of the Trustee since the date of bankruptcy;
 - (d) details surrounding a purchase and sale agreement entered into by the Trustee and The Times Press Limited.
3. All references to currency are in Canadian dollars unless otherwise noted.

TERMS OF REFERENCE

4. In preparing this First Report, the Trustee has relied upon unaudited financial information, records of the Company and discussions with the Company’s former management (“**Management**”). The Trustee has not performed an audit, review or other verification of such information and accordingly, the Trustee expresses no opinion or other form of assurance in respect of such information contained in this First Report.

BACKGROUND

5. Apache is a privately-held Alberta corporation, originally incorporated in 1963 as Apache Printing Ltd. prior to a name change to Apache Superior Printing Ltd. in 1965. A corporate search of the Alberta Registry Search indicates that Mr. David Gordon-Cooper (“**Mr. Gordon-Cooper**”) is the sole director of Apache.

6. The Apache plant is an integrated facility offering electronic pre-press, offset, digital, mail and bindery operations and its specialty presses allows for large format foiling, embossing and diecutting.

ASSETS AND LIABILITIES

Assets

7. The material assets of the Company as per the statement of affairs (the “**SOA**”) sworn by Mr. Gordon-Cooper are:
 - (a) Accounts Receivable: approximate book value of \$410,810.
 - (b) Machinery, equipment and plant: approximate net book value of \$3,030,665

Liabilities

8. The material liabilities of the Company as per the SOA, together with the Trustee’s preliminary comments with respect to same are provided below:
 - (a) Secured debt owed to Toronto Dominion Bank (“**TD Bank**”) in the estimated amount of \$403,000. A search of the Personal Property Registry Search indicates that TD Bank has a registered interest against all present and after-acquired personal property as well as numerous specific registrations against particular pieces of equipment. At this stage in the proceedings, the Trustee has not yet obtained an independent opinion as to the validity and enforceability of the TD Bank’s security.
 - (b) Secured debt owed to Hewlett-Packard Financial Services Canada Company (“**HP**”) in the estimated amount of \$1,480,088 pursuant to the leased printing press as described above. At this stage in the proceedings, the Trustee has not yet reviewed the validity and enforceability of the HP security interest.
 - (c) Potential secured amounts pursuant to Section 81.3(9) to the Company’s employees who are anticipated to have a secured claim for a portion of their claim for unpaid wages, unpaid vacation and severance/termination pay as of the date of

bankruptcy as against the current assets of the Company as well as a preferred portion for certain remaining amounts. As a result of the timing of the bankruptcy and the vacation of certain employees responsible for payroll, the quantum of such secured and/or preferred claims could not be quantified as at the date of filing, therefore marker amounts of \$1 were included to provide for notice of the bankruptcy to such creditors. The Trustee has made arrangements with the employee responsible for payroll to be retained by the Trustee to provide assistance in finalizing payroll and quantifying the amount of the employees' claim.

- (d) Potential preferred claim to the Company's landlord, who is a non-arm's length party.
- 9. Unsecured liabilities are listed in the aggregate amount of \$1,592,514 with the substantial portion being comprised of two amounts due to Mr. Gordon-Cooper and Ms. Barbara Gordon-Cooper pursuant to promissory notes. The Trustee notes that as of the date of this First Report, it has not obtained nor reviewed these promissory notes.
- 10. The Trustee advises that as of the date of this First Report it has not run a claims process, nor even completed its advertisement of the proceedings, therefore the above claim amounts are as reported in the SOA and have not been validated by the Trustee at this time.

ACTIVITIES OF THE TRUSTEE

Custody, control and preservation

- 11. Representatives of the Trustee attended at the Company's premises in Calgary and have taken the standard precautionary procedures of changing the locks on the premises, changing the alarm codes, arranging for mail redirection and removing Company vehicles to a secure location.
- 12. The Trustee retained one former employee on a day-to-day basis to assist with the cleaning and temporary shut-down of the machinery and equipment and has coordinated

the attendance of HP with respect to their attendance to do the same for the leased equipment subject to HP's secured claim.

Inventory

13. Representatives of the Trustee are in the process of conducting an inventory count of the material inventory and property, plant and equipment of the Company, together with reviewing for the existence of 30 day or customer owned goods (if any).

Wind down of operations

14. As a result of the cash flow constraints of the Company, together with the expected cash flow to be generated from the existing work in process being insufficient to sustain the significant payroll of the Company, the Trustee, in consultation with Management has elected to not continue operations at this time.

Employees

15. The Trustee met with employees to terminate their employment, advise of the existence of the *Wage Earner Protection Act* ("WEPPA") and to advise that the Trustee would forward them information with respect to such potential entitlement as soon as practicable.
16. The Trustee has entered into retention agreements with former Management and certain other former Apache personnel, such that they have agreed to provide assistance to the Trustee in its administration of the estate.

Negotiation of purchase agreement for certain assets likely to depreciate rapidly in value

17. As discussed in greater detail below, the Trustee was contacted by a competitor to the Company interested in acquiring certain of the Company's intangible assets, including *inter alia*, various materials with respect to the Company's customer lists and associated information.
18. Subsequent to these discussions, the Trustee negotiated and entered into a purchase and sale agreement for the sale of certain assets of the Company that would be expected to otherwise depreciate rapidly in value.

Statutory notice of bankruptcy

19. The Trustee has sent the required notice under Section 102(1) of the BIA to the creditors listed in the SOA.

Discussion with customers

20. The Trustee has had limited discussions with customers of the Company, pending completion of the above described purchase and sale agreement.

PURCHASE AND SALE AGREEMENT

21. On September 23, 2015, the Trustee was contacted by Mr. Fareed Suleman of The Times Press Limited (“**TPL**”) with respect to his interest in potentially acquiring certain of the intangible property of the Company.
22. Prior to this time, the Trustee understood based on information provided by Mr. Gordon-Cooper that the intangible property which TPL proposed to acquire was of little or no value.
23. Following exploratory discussions with TPL and discussions with Management and for the reasons outlined below, the Trustee determined that it would be in the best interest of the estate to enter into a purchase and sale agreement for the sale of the Trustee’s right, title and interest (if any), in certain of the Company’s assets which are considered likely to depreciate rapidly in value, with such agreement conditional on the receipt of Court approval for the reasons disclosed below.
24. As a result, on September 28, 2015, the Trustee entered into a purchase and sale agreement (the “**TPL Purchase Agreement**”) with TPL containing, *inter alia*, the following material terms:
 - (a) Assets being sold;
 - (i) Customer data, which is defined as all information related to the customers of Apache, including, but not limited to, customer lists in digital format, customer data files (including customer history, art files and any other

files pertaining to the customers in digital format including the software), physical customer dockets and customer plates;

- (ii) Apache's website and domain name; and
 - (iii) Miscellaneous computer equipment containing the above information.
- (b) Telephone and facsimile line shall be assigned to TPL;
- (c) Closing date of October 1, 2015;
- (d) Assets are being sold "as is, where is" with no representations, warranties as is customary in an insolvency sale of this nature;
- (e) Purchase Price; and
- (i) The purchase price negotiated between the Trustee and TPL is \$80,000 with such amount payable as follows:
 - 1. \$20,000 deposit which has been received by the Trustee and which shall be non-refundable, except in the event that the offer does not receive the approval of this Honourable Court;
 - 2. \$60,000 payable upon Closing.
- (f) TPL shall have an obligation within 30 days of closing to notify all customers whose contact information is included in the Customer Data to ask whether such customer requires TPL to return any information or property related to such customer in TPL's possession. If any customer requests the return of information or property related to that customer, or if the Trustee requests the return of information or property related to any customer, TPL agrees to convey such information or property to such customer or the Trustee, as the case may be within 15 days of such request, or October 24, 2015, whichever is later, with the costs of notifying and returning such property to be borne by TPL;

- (g) The TPL Purchase Agreement specifically excludes any other assets of the Company, without limiting the generality of the foregoing, including any accounts receivable outstanding to the Company. In the event that any monies due to Apache are paid to TPL subsequent to Closing, such monies shall be held in trust by TPL and shall be paid to the Trustee within 3 business days of receipt of such payment, without offset of any kind; and
- (h) Lastly, in the event the Trustee requires access to the assets subject to the TPL Purchase Agreement for the administration of the estate, TPL shall deliver such requested documents or records and provide access at anytime.

Discussion with creditors

- 25. The Trustee has consulted with TD Bank and advised them of the TPL Purchase Agreement and understands that TD Bank is supportive of the TPL Purchase Agreement.
- 26. The Trustee has consulted with Mr. Gordon-Cooper and Ms. Barbara Gordon-Cooper, as the holders of an aggregate \$1,473,733 or 92% of the unsecured claims listed on the SOA (excluding any unsecured portion of either preferred creditor or secured creditors claims and reiterates that given the infancy of these proceedings, no claim amounts have yet been substantiated) and both Mr. Gordon-Cooper and Ms. Barbara Gordon-Cooper are supportive of the TPL Purchase Agreement.

Court Approval

- 27. The Trustee feels it appropriate to seek Court approval of the TPL Purchase Agreement for the following reasons:
 - (a) Realization method and timing
 - (i) The Trustee has entered into the TPL Purchase Agreement, conditional on the receipt of the approval of this Honourable Court, contemplating a closing date prior to the first meeting of creditors. The Trustee is granted this authority through Section 18(a) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 which allows for the trustee "*Take conservatory*

measures and summarily dispose of property that is perishable or likely to depreciate rapidly in value”.

In this regard, the Trustee understands from Mr. Gordon-Cooper’s Affidavit sworn on September 28, 2015 (the “**Gordon-Cooper Affidavit**”) and filed in these proceedings, that as a result of the competitive nature of the printing industry the value of Apache’s customer list and historical sales information is likely to depreciate rapidly in value as the time period in which the customers are not serviced increases. The Gordon-Cooper Affidavit also highlights the fact that the former Apache sales people are well-established in the printing industry and have therefore likely found new employment such that Apache is at constantly increasing risk of losing any residual value from its customer relationships as time lapses from the date of bankruptcy.

By way of example, Mr. Gordon-Cooper has advised the Trustee that work scheduled to be completed by Apache on the date of bankruptcy of September 23, 2015 had already been re-routed to a competitor and completed by September 24, 2015, therefore every day in which the customers are not serviced, the value inherent in Apache’s customer list declines.

- (ii) In a normal marketing process conducted by a Trustee, a Trustee would design and implement a relatively fulsome marketing process for significant assets of the bankrupt estate. In this particular scenario, given the rapidly depleting value inherent in the intangible assets, the Trustee does not have sufficient time to design and implement a fulsome marketing process, as the time it would take to seek and potentially find alternative purchasers (with no guarantee of success), would likely erode the potential value inherent in the TPL Purchase Agreement. As a result, the Trustee has not, nor does it intend to, conduct a marketing process for the assets subject to the TPL Purchase Agreement.

(b) Customer goods

- (i) A term of the TPL Purchase Agreement is the transfer of Customer Data, certain of which was originally provided by customers and some of which may have been altered by Apache subsequent to the provision by customers, with such alterations having been paid for by the customer indirectly in the provision of previous printing services by Apache. The Trustee understands from discussions with Management and the Gordon-Cooper Affidavit, that there is typically no contract detailing the conditions upon which customers provide data or the obligations under which Apache holds such data.
- (ii) In the Gordon-Cooper Affidavit, Mr. Gordon affirms that in his experience, occasions where a customer may attempt to exert ownership of an aspect of Customer Data and request it be returned are rare. Mr. Gordon-Cooper has advised the Trustee that the nature of the majority of the Customer Data provided to Apache is that the Customer typically provides a copy of materials to be printed and typically retains a copy of that provided. In addition, in the Gordon-Cooper Affidavit, Mr. Gordon-Cooper affirms that in the ordinary course of business, given space limitations in the facility, Apache would periodically destroy outdated customer dockets and other customer data as provided by customers on its own initiative and without first seeking permission or consent from customers to do so.
- (iii) However, because of the time limitations in the circumstances, the Trustee, has included as a term of the TPL Purchase Agreement that TPL will contact each customer and provide them with an opportunity to request that any items transferred to TPL be returned to the customer within 15 days of such request, or October 24, 2014, whichever is later, with the cost of notification and delivery of such item to be borne solely by TPL.

Trustee's analysis of the TPL Purchase Agreement

28. Based on the information available to the Trustee as summarized above, the Trustee is of the opinion that the potential benefit to the bankrupt estate outweighs the potential prejudice to any individual customer, if any, for the following reasons:
- (a) Incremental recovery to the estate – the TPL Purchase Agreement provides an incremental recovery to the estate of \$80,000 which is in excess of any anticipated recoveries from the intangible property given affect that the rapidly declining value would have on any recovery process. Mr. Gordon-Cooper did not assign any value on the SOA to the customer list and associated intangible assets and absent the closing of the TPL Purchase Agreement, there would likely be no other recoveries with respect to the intangible assets.
 - (b) Reduced professional costs and disbursements – absent the TPL Purchase Agreement, the Trustee may be faced with a prolonged process for the return of the Customer Data ultimately determined to be property of the Customer in the event that such customer requests the return of such property. Absent, or subsequent to, such a process, the Trustee would be faced with storage or disposal costs for the Customer Data, which as per the Gordon-Cooper Affidavit, includes an estimate of 20,000 customer docket. The Trustee's tour of the Company's premises indicates that hard copy docket are onsite from at least 2007.
 - (c) Potential continuity to customers – the Trustee understands that the intention of TPL is to attempt to provide as much of continuity of service as possible to the former Apache customers which will be facilitated through an orderly transition of the Customer Data. For those customers who do not wish to continue with TPL, the TPL Purchase Agreement contains provisions allowing for such customers to have any property or information related to such customers returned in an orderly fashion.
 - (d) Mitigated effect on customers – the agreement of TPL to notify all customers of the TPL Purchase Agreement and TPL's undertaking to return any goods within 15 days of such request upon request by the customer substantially mitigates any

potential prejudice to an individual customer of the impact of the TPL Purchase Agreement. Secondly, in the event that TPL is unable to reach a customer for whatever reason to advise of the TPL Purchase Agreement and its respective undertakings thereto, as the telephone lines are being assigned to TPL, any further communications from the customer to the former Apache will be received by TPL, therefore the customer will be able to be informed of the transaction and the resulting impact to such customer at that time.

RECOMMENDATIONS

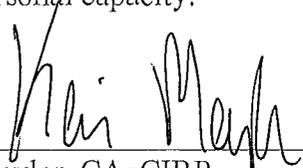
29. The Trustee respectfully recommends that this Honourable Court approve the TPL Purchase Agreement.

All of which is respectfully submitted this 28th day of September 2015

Hardie & Kelly Inc.

In its capacity as Trustee of Apache Superior Printing Ltd.
and not in its personal capacity.

Per:



Kevin Meyler, CA•CIRP
Senior Vice President

APPENDIX A

PURCHASE AGREEMENT

THIS AGREEMENT is dated as of September 28th, 2015 between:

HARDIE AND KELLY INC. in its capacity as Trustee in Bankruptcy of Apache Superior Printing Ltd., and not in its personal capacity

(the "Vendor")

– and –

THE TIMES PRESS LIMITED

(the "Purchaser")

RECITALS

- A. By an assignment in bankruptcy dated September 23, 2015, the Vendor was appointed as Trustee in Bankruptcy of the assets and undertakings of Apache;
- B. The Vendor and the Purchaser have agreed to enter into this Agreement pursuant to which the Vendor agrees to sell the Purchased Assets, as defined below, to the Purchaser;

FOR VALUE RECEIVED, the parties agree as follows:

SECTION 1– DEFINED TERMS

Apache means Apache Superior Printing Ltd.

Closing means 12 o'clock noon on October 1, 2015, or such date as may be agreed to by the parties.

Communication Lines has the meaning ascribed thereto in Section 2.4.

Completed Work means completed Customer products which have been paid for by a Customer but of which the Customer has not yet taken possession.

Computer Equipment and Discs has the meaning ascribed thereto in Section 2.1.3.

Customer Data means all information related to the customers of Apache, including, but not limited to, customer lists in digital format, customer data files (including customer history, art files and any other files pertaining to the customers in digital format including the software), physical customer dockets, customer plate files.

Date of Bankruptcy means September 23, 2015.

Excluded Assets means Completed Work, Work-in-Process Inventory, and all other assets of Apache as vested in the Vendor, except the Purchased Assets, as well as Customer Data related to sales for which there are outstanding accounts receivable as at the Date of Bankruptcy, subject to Section 3.3.

Internet Assets means Apache's website and domain name.



Leased Premises means the premises located at 3536, 27 Street NE, Calgary, Alberta.

Losses means, with respect to any matter, all losses, damages, liabilities, deficiencies, costs, expenses, claims, indemnities, taxes, fines and penalties (including reasonable legal fees).

Person includes any individual, corporation, limited liability company, unlimited liability company, body corporate, partnership, limited partnership, limited liability partnership, firm, joint venture, syndicate, association, capital venture fund, trust, trustee, executor, administrator, legal personal representative, estate, government, governmental agency and any other form of entity or organization, whether or not having legal status.

Purchase Price has the meaning ascribed thereto in Section 2.7.

Purchased Assets has the meaning ascribed thereto in Section 2.1.

Transaction means the sale of the Purchased Assets by the Vendor to the Purchaser as contemplated by this Agreement.

Work-in-Process Inventory means inventory related to a specific customer order for which production has commenced, but has not been completed as of the Date of Bankruptcy.

SECTION 2- TRANSFER AND ASSIGNMENT

- 2.1 On the terms and subject to fulfillment of the conditions hereof, the Vendor hereby agrees to transfer its right, title and interest, if any, in and to the following assets (all of such assets being hereinafter collectively referred to as the "**Purchased Assets**") to the Purchaser, specifically excluding any right title or interest of the Vendor, if any, in and to the Excluded Assets, and the Purchaser hereby agrees to purchase and accept from the Vendor the Purchased Assets:
- 2.1.1 the Customer Data;
- 2.1.2 the Internet Assets; and
- 2.1.3 Computer Equipment and Discs: consisting of (i) four computer servers containing (a) the Avanti and scheduling software, (b) a server backing up the contents of the Avanti and scheduling software (c) a web server and (d) a mail server (ii) two desktops formerly used by Apache staff for the customer order processing; (iii) an external hard drive; (iv) applicable CDs and DVDs containing art files; and (v) the pfSense (soekris) firewall and associated backup (collectively, the "**Computer Equipment and Discs**").
- 2.2 The Vendor hereby agrees to convey its right title and interest, if any, in and to the Purchased Assets, and the Purchaser hereby accepts the Purchased Assets, as vested in the Vendor and as they may exist, on an "as is, where is" basis, with effect as of Closing. The Purchaser confirms that it has entered into this Agreement on the basis that: (i) it has conducted its own investigations of the Purchased Assets; (ii) it has and shall be deemed to have inspected the Purchased Assets; (iii) it has satisfied itself with respect to the Purchased Assets and all matters and things connected with or in any way related to the Purchased Assets; and (iv) it is relying entirely on its own investigations and inspections in entering into this Agreement and accepting the Purchased Assets.
- 2.3 The Purchaser further confirms that the Purchased Assets are being purchased as they exist and at their location as of Closing. With respect to the Purchased Assets located at the Leased Premises, the Purchaser acknowledges that taking possession includes removing all Purchased Assets from

the Leased Premises at its own cost within 45 days from Closing. The Purchaser acknowledges that the Vendor has no obligation to deliver physical possession of the Purchased Assets to the Purchaser.

- 2.4 The Vendor agrees to enter into an assignment of its telephone line of (403) 291-2404 and its facsimile line of (403) [*] (collectively, the "**Communication Lines**"). All costs of such assignment shall be borne by the Purchaser. For the time period subsequent to Closing until such Communication Lines are transferred to the Purchaser, the Vendor shall cause calls to be electronically forwarded to the telephone and facsimile lines of the Purchaser, as provided by the Purchaser to the Vendor.
- 2.5 The Purchaser shall be solely responsible for requesting and obtaining the consent of any Person that is required in respect of carrying out the Transaction and for the use of the Purchased Assets thereafter, including, without limitation, any software licenses, other licenses and agreements of any kind. The Purchaser agrees to indemnify the Vendor for any Losses incurred by the Vendor as a result of the Purchaser's failure to obtain any such consent.
- 2.6 Upon Closing, the Vendor shall provide access to the Purchaser to the following for removal at the sole cost of the Purchaser:
- 2.6.1 the Computer Equipment and Disks; and
- 2.6.2 any physical customer docket.
- 2.7 The purchase price for the Purchased Assets is \$80,000 (inclusive of GST if applicable) (the "**Purchase Price**") to be paid as follows:
- 2.7.1 a deposit in the amount of \$20,000.00 is to be paid by way of bank draft, wire transfer, lawyer's trust cheque or certified cheque payable to "Hardie & Kelly Inc., in trust". The deposit shall be non-refundable, except in the event that a court does not grant its approval for this transaction in accordance with Section 2.10, in which case the deposit shall be returned to the Purchaser, without interest; and
- 2.7.2 an amount of \$60,000.00 is to be paid at Closing in the same manner as the deposit.
- 2.8 No adjustments to the Purchase Price will be made for any change in condition, value, quantity or quality of the Purchased Assets, or with respect to the Purchaser's ability to obtain any consents pursuant to Section 2.5, and the Vendor has made no representations, warranties, statements or promises or agreed to any condition with respect to the Purchased Assets, or as to title, liens, encumbrances or charges, existence, condition, merchantability, description, fitness for any particular purpose or use, marketability, authenticity, quantity or quality thereof, or with respect to the nature or character of the Vendor's right, title and interest, if any, in and to the Purchased Assets.
- 2.9 Notwithstanding the sale of the Customer Data, the Purchaser agrees that it will, no later than 30 days after Closing, contact all of the customers whose contact information is included in the Customer Data and ask whether each such customer requires the Purchaser to return any information or property related to such customer, which was conveyed to the Purchaser as part of the Transaction. If any customer requests the return of information or property related to that customer, or the Trustee requests the return of information or property related to any customer, the Purchaser agrees to convey such information or property to such customer or the Trustee, as the case may be, within 15 days of such request or October 24, 2015, whichever is later. The Purchaser agrees that it shall bear all costs of notifying customers and returning any property or




information to any customer or the Trustee. The Purchaser agrees to indemnify the Vendor for any Losses incurred by the Vendor as a result of the Purchaser's failure to return any information or property to any customer or the Trustee in accordance with this Section.

- 2.10 It is a condition precedent of this agreement that the Vendor shall obtain a court order approving the Transaction before Closing.

SECTION 3- ACCOUNTS RECEIVABLE

- 3.1 The Purchaser acknowledges that no sale or transfer of the proceeds of any of Apache's accounts receivable is made or contemplated by this Agreement and that the Vendor is entitled to receive payment of all such accounts receivable out of the payments received by the Purchaser on account thereof, if any.
- 3.2 In the event that any monies due to Apache are paid to the Purchaser subsequent to Closing, such monies shall be held in trust by the Purchaser and paid to the Vendor within 3 business days of receipt of such payment, without offset of any kind.
- 3.3 Customer Data related to sales for which there are outstanding accounts receivable shall be excluded from this Agreement until such time as the accounts receivable is collected in full, at which time the related Customer Data shall be made available to the Purchaser.

SECTION 4—MISCELLANEOUS

- 4.1 Post-Closing. In the event the Vendor requires access to the Purchased Assets for the administration of the estate, the Purchaser shall, upon request by the Vendor, deliver such requested documents or records to the Vendor, and shall allow the Vendor access to such Purchased Assets at any time.
- 4.2 Further Assurances. The parties hereto hereby agree to do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered all such further acts, deeds, assignments, transfers, conveyances and assurances as may be required to give effect to the provisions hereof.
- 4.3 Benefit of Agreement. This Agreement and all of its provisions shall enure to the benefit of and be binding on the parties hereto and their respective successors and permitted assigns.
- 4.4 Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to this subject matter, and supercedes any and all prior negotiations, understandings and agreements between the parties. This Agreement may not be amended or modified in any respect except by written instrument signed by the parties intended to be bound thereby, or by Court order.
- 4.5 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Province of Alberta and the laws of Canada applicable therein.
- 4.6 Counterparts and Fax Delivery. This Agreement may be executed in several counterparts and by facsimile or PDF each of which so executed shall be deemed to be an original and such counterparts together shall constitute one and the same instrument.
- 4.7 Independent Advice. Each of the Vendor and Purchaser acknowledge that they have received or waived the opportunity to receive independent legal in connection with this Agreement.
- 4.8 Date of Execution. The parties hereto have executed this Agreement as of the date first written above.



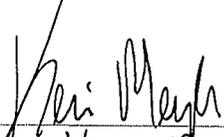
4.9 Personal Information. The Purchaser acknowledges that the Customer Data may contain personal and/or confidential information of Apache's customers and agrees that it will only use such personal and confidential information for the purposes of contacting such customers for business purposes, and specifically the retention of, and provision of continued service to, those customers.

[Signature page to follow]



lh.

HARDIE AND KELLY INC. in its capacity as Trustee
in Bankruptcy of Apache Superior Printing Ltd. and not
in its personal capacity

By: 
Name: Kevin Meyer
Title: Senior Vice President

~~THE TIMES PRESS LIMITED~~

By: 
Name: FAREED SOLEMANI
Title: PRESIDENT.

