

COURT FILE NUMBER 2301 - 13922

COURT COURT OF KING'S BENCH  
OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFF CONNECT FIRST CREDIT UNION LTD.

DEFENDANT OGEN HOLDINGS LTD. AND OGEN LTD.

DOCUMENT **THIRD REPORT OF THE RECEIVER**

**December 9, 2024**

ADDRESS FOR SERVICE AND  
CONTACT INFORMATION OF  
PARTY FILING THIS  
DOCUMENT

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## INTRODUCTION

1. On November 3, 2023 (the "**Receivership Date**"), by order of the Honourable Justice D.R. Mah of the Court of King's Bench of Alberta (the "**Court**"), Alvarez & Marsal Canada Inc. ("**A&M**") was appointed receiver and manager (the "**Receiver**"), without security, of all of Ogen Holdings Ltd. ("**OHL**") and Ogen Ltd.'s ("**OL**") (collectively, "**Ogen**" or the "**Company**") current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (other than the Excluded Assets (as defined below), the "**Property**"), pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the "**BIA**"), and section 13(2) of the *Judicature Act*, RSA 2000, c B-9, and 65(7) of the *Personal Property Security Act*, RSA 2000, c P-7 (the "**Receivership Order**").
2. Amongst other things, the Receivership Order empowers and authorizes, but does not obligate, the Receiver to take possession and exercise control over the Property and to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business. The Receivership Order also empowers the Receiver to borrow up to \$750,000 by way of a receiver's certificate and the whole of the Property is charged by way of a fixed and specific charge to secure such borrowings.
3. For greater clarity, the Property specifically excludes any of the Company's assets for which any permit or license is issued or may be issued in accordance or connection with the Controlled Substances Legislations (as defined in the Receivership Order) and the Receiver shall not be deemed to be in possession of any Property within the meaning of the Controlled Substances Legislation (the "**Excluded Assets**").
4. On September 1, 2023, Ogen presented a proposal (the "**Proposal**") to their creditors. On September 20, 2023, Ogen held the Creditors' Meeting (as defined in the Proposal), which was subsequently adjourned to November 2, 2023 which was then adjourned further.

5. On November 3, 2023, by an order of this Honourable Court ("**Terminating NOI Proceedings Order**"), pursuant to section 57.1 of the BIA, A&M was substituted, in place of KSV Restructuring Inc., as the proposal trustee of Ogen in the proposal proceedings (the "**Proposal Proceedings**") under court file numbers 25-2958981 and 25-2988977. Upon A&M, as proposal trustee, filing a certificate in the form attached to the Terminating NOI Proceedings Order, then the time within Ogen may file a proposal to their creditors will be immediately terminated in accordance with section 50.4(11) of the BIA and pursuant to section 50(12)(b) of the BIA, the proposal will be deemed to have been refused by Ogen's creditors.
6. On November 17, 2023, the Court granted an order (the "**Excluded Assets Order**") which, among other things, authorized the Company to distribute and/or sell certain Excluded Assets with the cooperation of the Receiver. The Receiver filed the first report of the Receiver (the "**First Report**") in support of the November 17, 2023 motion.
7. On February 16, 2024, the Receiver was granted a further order of the court, which among other things, authorized a sale and investment solicitation process (the "**SISP**") for the Property of the Company.
8. On February 29, 2024, the Court granted an order which provided that Ogen's license pursuant to the *Excise Act*, 2001 SC 2002, c. 22 would be cancelled on March 4, 2024.
9. The purpose of this third report of the Receiver (the "**Third Report**" or this "**Report**") is to provide this Honourable Court with information in respect of the following:
  - a) the activities of the Receiver since the Second Report;
  - b) an update on the Company's activities since the Second Report, including the Company's efforts to sell and destroy all remaining Excluded Assets (i.e. cannabis and cannabis products), with input from Health Canada and with the assistance of the Receiver;

- c) an update on the SISP and its eventual termination;
  - d) the Receiver's application for an Order (the "**Restricted Court Access Order**") sealing Confidential Appendices 1 to 3 of this Report;
  - e) the Receiver's application for an Order (the "**Receiver's Borrowings Charge Increase Order**") to increase the quantum of the Receiver's Borrowings Charge (as defined in the Receivership Order) by \$800,000 to a total of \$1.55 million;
  - f) the cash flow results for the period from January 27, 2024 to November 29, 2024 (the "**Reporting Period**");
  - g) approval of the Receiver's actions, activities and conduct, and approval of the Receiver's fees and disbursements and those of the Receiver's Counsel since the Receivership Date;
  - h) the Receiver's ongoing activities and its intended course of action; and
  - i) the Receiver's conclusions and recommendations.
10. Capitalized words or terms not otherwise defined in this Report are as defined in the First Report, Second Report, or the Receivership Order.
11. All references to dollars are in Canadian currency unless otherwise noted.

## **TERMS OF REFERENCE**

12. In preparing this Third Report, the Receiver has relied upon: (i) the representations of certain management and other key stakeholders of Ogen; and (ii) financial and other information contained in the Company's books and records, which were produced and maintained principally by the Company. The Receiver has not performed an audit, review or other verification of such information.
13. The Receiver has not performed an audit, review or otherwise attempted to verify the accuracy or completeness of the Company's financial information that would

wholly or partially comply with Canadian Auditing Standards ("CASs") pursuant to the *Chartered Professional Accountants Canada Handbook*, and accordingly, the Receiver expresses no opinion or other form of assurance contemplated under CASs in respect of the financial information. Any future oriented financial information relied upon in this Report is based on the Receiver's assumptions regarding future events and actual results achieved will vary from this information and the variations may be materials.

## **BACKGROUND AND OVERVIEW**

14. Ogen is an Alberta-based company that engaged in the business of cultivation and production of cannabis with property and a manufacturing facility and operations located in Calgary, Alberta. The Ogen facility is a purpose-built indoor production facility that is approximately 57,300 sq. ft. in size on a lot that is approximately 2.32 acres (the "**Ogen Facility**"). OHL owns the Ogen Facility and related production equipment, which it leases to OL. OHL does not conduct any business operations nor have any employees.
15. OL was incorporated pursuant to the laws of Alberta as "Bloom Cultivation Ltd." on April 26, 2013. On June 9, 2020, OL changed its name from Bloom Cultivation Ltd. to Ogen Ltd. OHL was incorporated pursuant to the laws of Alberta as "Bloom Cultivation Holdings" on January 12, 2017 and changed its name to Ogen Holdings Ltd. on January 24, 2020.
16. OHL is the sole shareholder of OL. OHL has approximately 15 shareholders, the two largest of which are G. Edwards Holdings Ltd. and Hawksworth Holdings Ltd. who respectively hold 40.67% and 46.31% of the voting common shares of OHL.
17. As at the Receivership Date, OL had approximately 86 employees. The Receiver initially terminated the employment of 80 employees while continuing to utilize 6 employees to assist in the receivership proceedings. As at the date of this Report, the Receiver continues to retain the services of one of the Company's employees.

18. Ogen produced high-quality bulk flower and pre-rolls. Ogen previously held a license from Health Canada under the *Cannabis Act*, SC 2018, c. 16 (the "**Health Canada License**"), an excise license under the *Excise Act*, 2001 SC 2002, c. 22, (the "**Excise License**") and was party to certain supply agreements with provincial distributors and customers, such as the Alberta Gaming, Liquor and Cannabis Commission ("**AGLC**"), the Ontario Cannabis Retail Corporation, and others across Canada.
19. Connect First Credit Union (the "**Lender**" or "**CFCU**") is the most significant secured creditor of Ogen and as of the Receivership Date, the Company was indebted to the Lender of approximately \$21.9 million. As a result of a settlement of certain guarantees, the current amount outstanding to CFCU is approximately \$14.3 million. The Company's next significant creditor is the Canada Revenue Agency (the "**CRA**") with total indebtedness outstanding of approximately \$5 million, of which approximately \$253,000 relates to GST and the remaining balance of approximately \$4.7 million relating to an excise tax claim.
20. Further background on the Company is also contained in the materials filed in support of the Receivership Order, including the Affidavit of Kunle Popoola sworn October 24, 2023 (the "**KP Affidavit**"), the Receiver's First Report and the Receiver's Second Report. These documents and other publicly filed Court materials in these proceedings have been posted on the Receiver's website at: <https://www.alvarezandmarsal.com/ogen> (the "**Receiver's Website**").

#### **ACTIVITIES OF THE RECEIVER SINCE THE SECOND REPORT**

21. Since the Second Report, the Receiver's activities have included, but are not limited to, the following:
  - a) terminating the employment of certain employees no longer required as a result of the Receivership Order being granted;

- b) continuing to secure and safeguard the Property, except for the Excluded Assets, with the assistance of the Company's employees that were retained by the Receiver and certain contractors;
- c) assisting the Company in the negotiation, execution and closing of a sale agreement (the "**IP Sale Agreement**") for certain of its genetic material, which form part of the Excluded Assets, and certain of the Company's brand, intellectual property and provincially listed stock-keeping units, which form part of the Property, with Oceanic Releaf Inc. ("**Oceanic**") for approximately \$165,000;
- d) conducting the SISP pursuant to the SISP Procedures (as defined in the Receiver's Second Report) and conducting numerous site tours and with the Canadian Cannabis Exchange ("**CCX**") acting as the marketing agent (the "**SISP Marketing Agent**") and interested parties;
- e) various communications with interested parties and brokerage companies respecting their interest in the purchase of the Company's inventory, equipment and building;
- f) review of letters of intent submitted by Phase 1 Qualified Bidders (as defined in the Second Report), in consultation with the SISP Marketing Agent and the Lender;
- g) subsequent negotiations with certain Phase 1 Qualified Bidders regarding the letters of intent submitted and ultimately terminating the SISP around May 14, 2024, in consultation with the Lender, as a result of no acceptable offer being able to close a transaction;
- h) soliciting proposals from select real estate agents to reignite a new marketing process for the sale of the Ogen Facility and selecting Avison Young Commercial Real Estate Services LP ("**Avison**") as the marketing agent, with approval from the Lender;



- i) completing two separate renewals of the Company's insurance policy, to ensure that the Property is adequately protected and insured;
- j) corresponding with respective counsel for the Department of Justice and Health Canada, with respect to the destruction of the Company's remaining Excluded Assets, the cancellation of Ogen's Excise License, and the expiration of Ogen's Health Canada License;
- k) monitoring the cash flows of the Company on a daily basis and developing cash flow forecasting to manage future cash flow requirements of the Company;
- l) numerous communications with the Company's senior management, the Company's counsel, the Lender and its legal counsel, respecting operational matters and the Company's interest to sell certain of the Excluded Assets to assist in maximizing relations of the estate; and
- m) providing instructions to MLT Aikins LLP (the "**Receiver's Counsel**"), on a variety of matters with respect to the receivership proceedings, including an independent security review.

## **OPERATIONAL UPDATE**

- 22. As described in the Second Report, the Company and the Receiver jointly conducted a sales and marketing process for certain of the Excluded Assets and the Property.
- 23. The Excluded Assets, which were kept in the Company's possession and control, included the genetic material relating to the Company's numerous strains of cannabis, including cannabis plants and dried seeds (the "**Genetics**"). The Property (which was marketed with the above Excluded Assets), including certain of the Company's trademarked brands, stock-keeping units ("**SKUs**"), marketing campaigns, social media accounts, and other intellectual property assets

- (collectively, the "**Intellectual Property**"), were under the Receiver's control and marketed by the Receiver.
24. The Company and the Receiver, with the support of the Lender, engaged CCX to act as the marketing agent (the "**IP Marketing Agent**") to help sell the Genetics, SKUs and Intellectual Property (collectively, the "**IP Assets**").
  25. The IP Assets were broadly marketed by the IP Marketing Agent, further details of which are included in the Receiver's Second Report.
  26. Following the final bid deadline on February 7, 2024, the submitted bids were reviewed and negotiated by the Company and the Receiver. The most competitive of the six (6) bids received was from Oceanic.
  27. Subsequent to the final bid deadline, the Company and Receiver negotiated a sale agreement with Oceanic for the IP Assets (the "**IP Sale Agreement**"). The IP Sale Agreement was executed by all parties on February 16, 2024. An amendment to the IP Sale Agreement (the "**Amended IP Sale Agreement**") was executed by all parties on February 27, 2024. Copies of the IP Sale Agreement and the Amended IP Sale Agreement are included as Confidential Appendices "1" and "2" of this Report.
  28. Due to the confidential nature of the information provided in the IP Sale Agreement and the Amended IP Sale Agreement, the Receiver is concerned that, if the information is disclosed to third-parties, the disclosure could harm the purchaser's commercial interests. As such, the Receiver is respectfully of the view that it is appropriate for this Honourable Court to seal Confidential Appendices 1 and 2, in accordance with the proposed form of the Restricted Court Access Order.
  29. Subsequent to the conclusion of the sale of the IP Assets, the Company proceeded to destroy all of the remaining Excluded Assets which were not transferred to Oceanic pursuant to the IP Sale Agreement. The destruction of the remaining Excluded Assets concluded on March 4, 2024, and was conducted in accordance with all applicable laws in all material respects.

30. The Company and the Receiver held numerous correspondence with counsel for the CRA and Health Canada to ensure that the Company's destruction of the remaining Excluded Assets was completed in a compliant manner. On March 5, 2024, representatives of the CRA completed a physical inspection of the Ogen Facility to verify that all Excluded Assets had been properly disposed of. The CRA did not raise any concerns during their inspection of the Ogen Facility.

## **SISP UPDATE**

31. The Receiver, with the assistance of the SISP Marketing Agent, undertook a comprehensive marketing process which commenced on February 20, 2024. The Receiver and SISP Marketing Agent delivered a teaser package and non-disclosure agreement (the "**NDA**") to a list of potential bidders, including strategic partners and capital providers (the "**Prospective Bidders**"). The teaser package included general information with respect to the Ogen Facility and equipment, sample photos and the key milestones of the SISP.
32. The Receiver prepared and disseminated notices of the SISP in various news publications, including the Calgary Herald, Insolvency Insider, StratCann and Newswire.
33. A detailed package of marketing materials, which included drawings and specifications, a virtual 3-D tour of the Ogen Facility, detailed asset and inventory listings, historical maintenance records, details of the Health Canada License, insurance and environmental records (the "**SISP VDR Materials**"), was assembled and made available in a virtual data room ("**VDR**") to Prospective Bidders who executed an NDA (the "**Qualified Phase 1 Bidders**").
34. Throughout the course of the SISP:
- a) 1,670 Prospective Bidders were contacted;
  - b) 51 Qualified Phase 1 Bidders executed NDAs and received access to the VDR; and

c) 9 Qualified Phase 1 Bidders conducted tours of the Ogen Facility.

35. The Receiver extended the initial Phase 1 Bid Deadline by two weeks to April 5, 2024 to allow sufficient time for the interested Qualified Phase 1 Bidders to submit competitive non-binding letters of intent ("**LOIs**").
36. Ultimately, on April 5, 2024 thirteen (13) LOIs were submitted to the Receiver. Five (5) of the LOIs submitted contemplated a purchase of the Ogen Facility, and eight (8) of the LOIs included a purchase of certain inventory and equipment.
37. Subsequent to the Phase 1 Bid Deadline, the Receiver and SISP Marketing Agent reviewed the LOIs with CFCU. Numerous discussions were held with certain of the Qualified Phase 1 Bidders to clarify their LOIs and negotiate an offer that was acceptable to all parties involved. Notwithstanding the efforts made by the parties in negotiating an acceptable offer, a transaction could not be consummated that was acceptable by CFCU.
38. As a result of the foregoing, and in the absence of an acceptable transaction, the Receiver terminated the SISP on May 14, 2024.
39. Following the termination of the SISP, CFCU requested that the Receiver continue to review opportunities and strategies with the goal to maximize realizations for the estate. The Receiver held discussions with various real estate brokers to evaluate alternate strategies such as a renovation of the Ogen Facility, entering into a lease or a lease-to-own agreement with a Prospective Bidder interested in the Ogen Facility, or completing an additional marketing process for the Property.
40. Through the Receiver's discussions with numerous real estate brokers and in consultation with CFCU, it was determined that a refreshed marketing process of the Ogen Facility would be appropriate under the circumstance for the Ogen Facility.
41. The Receiver contacted three commercial realty brokerages (the "**Brokers**") in order to obtain their professional and independent views of the market and potential

realizations of the Property. Each of the Brokers submitted their proposals to the Receiver on or around September 20, 2024. The Receiver reviewed the Proposals to further understand and discuss the same.

42. After considering the Proposals, the Receiver, with the support of CFCU, selected Avison to assist the Receiver with the marketing of the Ogen Facility. A copy of the redacted marketing engagement agreement executed with Avison (the "**Avison Engagement Agreement**") is attached to this Report as Appendix "A".
43. The Receiver is of the view that the commission structure within the Avison Engagement Agreement is commercially sensitive and its disclosure may lead to speculation by potential purchasers with respect to Avison and the Receiver's preliminary views regarding the value of the Ogen Facility. As such, the Receiver is respectfully of the view that it is appropriate that the Court grant the Receiver's request for a Restricted Court Access Order to seal Confidential Appendix "3".

#### **TERMINATION OF THE NOI PROCEEDINGS**

44. Pursuant to the Terminating NOI Proceedings Order granted by this Honourable Court on November 3, 2023, upon A&M filing a certificate in the form attached to the Terminating NOI Proceedings Order (the "**Proposal Trustee Certificate**"), the time within Ogen may file a proposal to their creditors will be immediately terminated in accordance with section 50.4(11) of the BIA and pursuant to section 50(12)(b) of the BIA, the proposal will be deemed to have been refused by Ogen's creditors.
45. A&M, acting as proposal trustee, filed the Proposal Trustee Certificate with the Court on September 25, 2024, which resulted in a deemed bankruptcy of the Company and A&M being appointed as the licensed insolvency trustee ("**LIT**") for the estate.
46. A&M's appointments as the LIT of the bankrupt estates were ratified by creditors during the first meetings of creditors held on October 15, 2024.

## INTERIM STATEMENT OF RECEIPTS & DISBURSEMENTS

47. The following is an interim statement of the Receiver's receipts and disbursements in respect of the Company during the Reporting Period:

<b>OGEN Ltd. and OGEN Holdings Ltd.</b> <b>Interim Statement of Receipts and Disbursements</b> <b>November 3, 2023 to November 29, 2024</b> <i>in CAD \$</i>			
	First Report Nov 3/23 to Jan 26/23	Reporting Period Jan 27/24 to Nov 29/24	Total Nov 3/23 to Nov 29/24
<b>Opening cash balance</b>	\$ -	\$ 556	\$ -
<b>Receiver's borrowings</b>	\$ -	\$ 750	\$ 750
<b>Receipts</b>			
Provincial Customer receipts	526	5	531
Private Customer receipts	223	50	273
Cannabis Sales	1,040	406	1,446
Other Receipts	2	221	223
<b>Total receipts</b>	<b>1,790</b>	<b>683</b>	<b>2,473</b>
<b>Disbursements</b>			
Employee Costs - Pre-Receivership	259	-	259
Employee Costs - Post-Receivership	343	262	605
Excise, Health Canada	6	185	191
Winddown support services	40	40	80
Windown materials	2	3	5
IT	13	16	29
Insurance	66	134	200
Utilities	122	419	541
Professional Fees	406	571	977
Appraisal Fees	-	9	9
Broker Commission	-	12	12
Property Tax	-	243	243
Transfer to Bankruptcy Account	-	2	2
GST paid/(received)	(23)	22	(1)
<b>Total disbursements</b>	<b>1,235</b>	<b>1,918</b>	<b>3,153</b>
<b>Ending cash balance</b>	<b>556</b>	<b>70</b>	<b>70</b>

48. There was approximately \$556,000 of cash at the start of the Reporting Period.
49. The Receiver collected approximately \$683,000 during the Reporting Period, primarily comprised of the following:
- a) collection of pre-receivership accounts receivable and sales to the AGLC; and

- b) proceeds from the sale of the IP Assets and a separate domain name owned by the Company.
50. The Receiver made disbursements of approximately \$1.9 million during the Reporting Period, relating primarily to:
- a) utilities costs for electricity, water, and natural gas of approximately \$419,000;
  - b) payments of approximately \$262,000 relating to wages and benefits for the remaining employees and independent contractors;
  - c) property tax of approximately \$243,000;
  - d) payments of approximately \$185,000 relating to excise tax and fees to Health Canada;
  - e) insurance costs of approximately \$134,000;
  - f) winddown support services relating primarily to repairs and maintenance expenses of approximately \$40,000; and
  - g) professional fees totaling approximately \$571,000 relating to payment of invoices for the following:
    - i. the Receiver's and Receiver's Counsel's fees and costs in the amount of approximately \$443,000 and \$115,000, respectively for fees and expenses incurred up to September 30, 2024;
    - ii. Company's counsel's fees and costs totaling approximately \$13,000 for fees and costs incurred in the receivership proceedings up to September 30, 2024 authorized by the Receiver to assist the Company to sell the Excluded Assets and other services provided to the Receiver; and
51. The ending cash available as at November 29, 2024 was approximately \$70,000.

52. The Receiver notes that the Interim Financing Charge of \$500,000 which was granted in the NOI Proceedings and fully utilized, remains outstanding and unpaid.
53. Pursuant to paragraph 24 of the Receivership Order, the Receiver has been empowered to borrow by way of revolving credit or otherwise, up to \$750,000, or such greater amounts as the Court may further order. The Receiver was required to borrow the entirety of these funds during the Reporting Period.

#### **INCREASE IN THE RECEIVER'S BORROWING CHARGE**

54. As referenced above, pursuant to paragraph 24 of the Receivership Order, the Receiver is empowered to borrow monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$750,000, or such greater amount as the Court may by further order authorize.
55. As of the date of this Report the Receiver has borrowed \$750,000 to fund disbursements related to the ongoing administration of the estate. Based on the Receiver's current best estimates of the funding requirements over the coming months, the Receiver will require additional draws of \$800,000 to fund the normal-course operations of the estate.
56. Accordingly, the Receiver respectfully requests that this Honourable Court approve the Receiver's request to increase the Receiver's Borrowings Charge from \$750,000 to \$1.55 million. The Receiver is advised that the Lender is supportive of this increase to the Receiver's Borrowings Charge.

#### **APPROVAL OF PROFESSIONAL FEES AND EXPENSES**

57. Pursuant to paragraphs 21 to 23 of the Receivership Order, the Receiver seeks approval from this Honourable Court of the respective professional fees and disbursements of the Receiver and its legal counsel for the period from January 1, 2024 to September 30, 2024 (the "**Interim Taxation Period**"). The professional fees of the Receiver and its legal counsel for the period from October 30, 2023 to



December 31, 2023 were previously approved in an order granted by this Honourable Court on February 16, 2024.

58. Professional fees and expenses for the Receiver during the Interim Taxation Period total \$442,708.37 (exclusive of GST) (the "**Receiver's Fees and Costs**"). Professional fees and expenses of the Receiver's Counsel during the Interim Taxation Period total \$115,426.88 (exclusive of GST) (the "**Receiver's Counsel's Fees and Costs**").
59. A summary of the Receiver's Fees and Costs and the Receiver's Counsel's Fees and Costs are attached as Appendix "**B**".
60. The Receiver and the Receiver's Counsel's invoices outline the date of the work completed, the description of the work completed, the length of time taken to complete the work and the name of the individual who completed the work. The Receiver will be filing to this Honourable Court an affidavit of professional fees and costs of the Receiver, as per the common practice in the Edmonton jurisdiction.
61. The Receiver respectfully submits that its professional fees and disbursements and those of its legal counsel in this operating receivership commensurate with the work performed as outlined in the First Report and this Report, are commercially fair and reasonable and were validly incurred in accordance with the provisions of the Receivership Order.

## **RECEIVER'S ONGOING ACTIVITIES AND FUTURE COURSE OF ACTION**

62. The Receiver's next steps include, but are not limited to:
  - a) assisting Avison to market the remaining Property of the Company;
  - a) continuing communication with and updates to the Lender and other stakeholders in the receivership proceedings; and
  - b) completing other administrative tasks related to the receivership proceedings.

## RECEIVER'S CONCLUSIONS AND RECOMMENDATIONS

63. The Receiver respectfully recommends that this Honourable Court approve the:

- a) Restricted Court Access Order;
- b) Receiver's Borrowings Charge Increase Order;
- c) Receiver's Fees and Costs and the Receiver's Counsel's Fees and Costs;  
and
- d) actions, activities and conduct of the Receiver to date and as outlined  
in greater detail in the First Report, the Second Report and Third  
Report.

All of which is respectfully submitted this 9<sup>th</sup> day of December, 2024.

**ALVAREZ & MARSAL CANADA INC.,  
in its capacity as the Court-appointed Receiver of  
Ogen Holdings Ltd. and Ogen Ltd. and not its  
personal or corporate capacity**



Orest Konowalchuk, CPA, CA, CIRP, LIT  
Senior Vice President



Stephen Oosterbaan, CIRP  
Manager

## **APPENDIX "A"**

**12 NOVEMBER 2024**

AVISON YOUNG COMMERCIAL REAL ESTATE SERVICES, LP  
Suite 4300, 525 – 8<sup>th</sup> Avenue SW  
Calgary, AB T2P 1G1

**Attention: David Jantzie, Tristan Starzynski, Tyler Wellwood, Cody Arseneault**

RE: Municipal Address: 5430 – 30 Street SE, Calgary, AB  
Legal Description: Plan 2007JK, Block 2, Lot 1

(the "**Property**")

In consideration of Avison Young Commercial Real Estate Services, LP ("**Avison Young**"), agreeing to provide its services in accordance with the terms of this Exclusive Commercial Listing Agreement (the "**Listing Agreement**"), **Alvarez & Marsal Canada Inc., in its capacity as court-appointed receiver of Ogen Ltd. and Ogen Holdings Ltd. and not in its personal or corporate capacity (the "Receiver" "we", "our", "us" "Vendor" or "Lessor")** authorizes and empowers Avison Young to act as our exclusive agent to list for lease or sale and to procure offers for lease or sale of the Property ("**Lease Agreement**" or "**Sale Agreement**") on the terms and conditions defined below:

1. **Term.** Subject to earlier termination in accordance with paragraph 14 below, the Listing Agreement remains in full force and effect from the date of execution by both parties until 5:00 o'clock p.m., Calgary time on May 1, 2025 unless the parties agree to renew this Listing Agreement.

("Term" means the term of the Listing Agreement and any renewals.)

2. **List Price.** Avison Young will list the Property for sale and for lease and will solicit offers from prospective Purchasers or Lessees.

- (a) **Commission for Lease.** Should the Property or any portion thereof be leased during the Term or should a lease of the Property be made as a result of negotiations that originated during the Term, whether or not Avison Young takes part in those negotiations, we agree to pay Avison Young a leasing commission as follows:

- (i) In the event that a lessee is represented solely by David Jantzie, Tyler Wellwood, Tristan Starzynski, Cody Arseneault (the "**Listing Agents**"), to the exclusion of other licensed brokers, the commission for a lease shall be [REDACTED]

(ii)

- (b) **Commission for Sale.** Should the Property or any portion thereof be sold during the Term, or should a sale be made as a result of negotiations that originated during the Term, we agree to unconditionally pay Avison Young a commission as follows:

- (i) In the event that a purchaser is represented solely by the Listing Agents, to the exclusion of other licensed brokers, the commission for a sale shall be based on the following:

[REDACTED]

[REDACTED]

(ii)

(collectively the "**Commission**").

- (c) **Excluded Lessees and Purchasers.** Notwithstanding anything to the contrary in this Listing Agreement, no Commission shall be payable or become owing to Avison Young if the Property or any portion thereof is leased or sold to [REDACTED] including without limitation, during the Term, within sixty (60) days after the expiration of the Term or date of termination of the Listing Agreement, or as a result of any negotiations that originated during the Term.
3. **Lease or Sale of Property.** The Property will be deemed to be leased or deemed to be sold, and the Commission fully earned by Avison Young, immediately upon the earlier of:
- (a) our entering into an unconditional binding Lease Agreement or the closing of the transactions contemplated under the Sale Agreement, subject to our receipt of all necessary court approvals and court orders approving the Lease Agreement or Sale Agreement, as applicable; or
  - (b) the lessee or purchaser taking possession of the Property.
4. **Payment of Commission.** We will unconditionally and without any set off or deduction, pay the Commission on the earlier of:
- (a) the execution of an unconditional binding Lease Agreement or the closing of the transactions contemplated under the Sale Agreement, subject to our receipt of all necessary court approvals and court orders approving the Lease Agreement or Sale Agreement, as applicable; or
  - (b) the lessee or purchaser taking possession of the Property.
5. **Taxes.** In addition to any other amounts payable, we agree to pay to Avison Young, at the time of payment of the Commission, any G.S.T., sales tax, value added tax, or any other similar tax imposed against us by any federal, provincial, or municipal law, bylaw, or regulation (collectively, "**Taxes**"), to the extent that such Taxes are imposed on us by reason of any service provided to us by Avison Young.
6. **Deposit.** We agree that if any Sale or Lease Agreement provides for deposits to be paid (the "**Deposit**"), the Deposit will be held by Avison Young in its trust account. We authorize Avison Young, upon receipt of our or our solicitors' written authorization, to deduct earned Commission and other amounts that may be or become owing by us to Avison Young from any such Deposit held when such Commission becomes payable pursuant to the terms of this Listing Agreement. In the event that the Deposit is absolutely forfeited by a purchaser, we authorize Avison Young, upon receipt of our or our solicitors' written authorization, to deduct and pay itself an amount not to exceed the amount of Commission and other amounts that may be or become owing by us to Avison Young pursuant to the terms of this Listing Agreement provided such amount will not exceed fifty (50%) percent of the Deposit. The remaining balance of the Deposit will then be paid to us.
7. **Irrevocable Order and Direction to Pay.** We will pay or will cause our solicitors to pay to Avison Young any and all Commission and other amounts that may be or become owing by us to Avison Young, and we irrevocably assign such amounts to Avison Young from any amounts our solicitors may hold to our credit. For that purpose we will execute and deliver to our solicitors an irrevocable order and direction to pay in favour of Avison Young.
8. **Lease or Sale Following Expiration of Term.** We agree that in the event the Property or any portion of it is leased or deemed to be leased or sold or deemed to be sold within sixty (60) days following the earlier of the expiration of the Term or the date of the termination of the Listing Agreement, and:

- (a) the lessee or purchaser was introduced to us by Avison Young; or
- (b) the lessee leased the Property or any portion of it as a result of negotiations or services provided by Avison Young before the termination or expiration of the Term; or
- (c) the purchaser purchased the Property or any portion of it as a result of negotiations or services provided by Avison Young before the termination or expiration of the Term,

then we agree to pay the Commission and any other amounts payable to Avison Young in accordance with the provisions of the Listing Agreement. Within seven (7) days of the expiration or termination of the Term, Avison Young will provide to us, a written list of any prospective lessees and prospective purchasers who have been in direct contact with Avison Young with respect to the potential lease or purchase of the Property or that Avison Young are actively pursuing.

- 9. **Interest.** We agree that any outstanding Commission and other amounts that may be or become owing by us to Avison Young will bear interest and we agree to pay Avison Young interest at a rate of one (1%) percent per month (12% per annum) on such amounts calculated and payable monthly, if such amounts are more than thirty (30) days overdue.
- 10. **Legal Costs.** We agree to pay to Avison Young, and such amount will become part of the amounts owing, all costs, charges, and expenses (including without limitation all legal fees and disbursements as between a solicitor and his own client on a full indemnity basis) incurred by Avison Young as a result of any default by us in complying with any term or condition of the Listing Agreement.
- 11. **Representations and Warranties.**
  - (a) We represent and warrant that, to the best of our knowledge and except as otherwise disclosed in writing to Avison Young, the following statements respecting the Property are true and accurate:
    - (i) we have the authority to enter into this Agreement and perform all of our obligations herein, including but not limited to the authority to sell the Property as well as payment of any commissions that become due and owing hereunder.
- 12. **Duties and Responsibilities of Lessor.** For the duration of the Term, we will:
  - (a) give Avison Young convenient access at all reasonable times for the purpose of showing the Property;
  - (b) permit Avison Young to place suitable "For Sale/Lease" or similar signs on the Property;
  - (c) communicate and co-operate with Avison Young in a timely manner;
  - (d) provide Avison Young with all information necessary for the listing and marketing of the Property on an "as is, where is basis". For certainty, Avison Young acknowledges that all information provided by us regarding the Property is on an "as is, where is basis" with no representations or warranties as to accuracy or completeness;
  - (e) as soon as reasonably practicable, advise Avison Young of any material change in the physical condition or status of the Property; and
  - (f) refer to Avison Young any and all offers for lease submitted to us from any source whatsoever, before acceptance of same by us.
- 13. **Formal Lease and Sale Agreement.** Preparation of formal Lease Agreement and Sale Agreement documentation will be at our expense.
- 14. **Confidentiality.** Unless otherwise advised in writing, any and all information received by Avison Young from us, or from any other party regarding us, in the course of the agency relationship contemplated will be deemed

to be information disclosed in confidence to Avison Young notwithstanding that such information may have been received before the execution of the Listing Agreement.

15. **Termination.** Either party may terminate the Listing Agreement (the "**Terminating Party**") as follows:
- (a) The Listing Agreement may be terminated by either party for any reason or for convenience at any time after sixty (60) days following the commencement of the Term. The Terminating Party will notify the other party in writing of its intention to terminate the Listing Agreement and the Listing Agreement will automatically terminate ten (10) days after the receipt of the written notice.
  - (b) In the event a party (the "**Defaulting Party**") is in default of complying with any other term or condition of the Listing Agreement, the Terminating Party will notify the Defaulting Party in writing of its intent to terminate this Listing Agreement for default or non-performance by the Defaulting Party. Such notice will provide the specifics of the alleged default or non-performance by the Defaulting Party and the Defaulting Party will have ten (10) days from receipt of such notice to remedy or rectify such default or non-performance, or, if not remediable or rectifiable within ten (10) days, to take such steps to commence to remedy or rectify such default or non-performance as is reasonable in the circumstance (the "Cure Period"). If, in the Terminating Party's opinion, acting reasonably, such default or non-performance has not been remedied or rectified, the Terminating Party may, after expiry of the Cure Period, terminate this Listing Agreement upon providing ten (10) days written notice to the Defaulting Party.
  - (c) Notwithstanding Paragraphs 14(a) or (b), in the event that Avison Young makes a general assignment for the benefit of its creditors, files or presents a bankruptcy application, makes a proposal, or commits any act of bankruptcy, or if any action is taken for the winding up, liquidation, or the appointment of a liquidator, trustee in bankruptcy, custodian, curator, sequestrator, receiver, or any other officer with similar powers, or if a judgment or order is entered by any court approving a plan or proposal for reorganization, arrangement, or compromise or in respect of Avison Young, then we, may but will not be obligated, to terminate the Listing Agreement immediately upon giving written notice to the other party.
  - (d) This Listing Agreement may be terminated immediately upon the pronouncement of an order by any court of competent jurisdiction, and the terms of such order governing the termination of this Listing Agreement shall supersede any terms contained herein
16. **Transaction Brokerage.** We acknowledge that from time to time Avison Young may also be asked to represent a purchaser or lessee of the Property. In the event that Avison Young wishes to represent both us and the lessee, or purchaser, then Avison Young will:
- (a) immediately advise us of its desire to undertake concurrent representation of us and the lessee or prospective lessee;
  - (b) give us an opportunity to seek independent advice concerning the joint representation; and
  - (c) obtain the agreement of us and the lessee, or prospective lessee, to the form of Transaction Brokerage Agreement in accordance with the attached Schedule "A."


In the event we are not prepared to enter into the Transaction Brokerage Agreement, then Avison Young will continue to represent us only, and Avison Young will advise the lessee or prospective lessee accordingly.

17. **Notice.** Any notice required to be given under this Listing Agreement may be given to Avison Young at Suite 4300, 525 – 8<sup>th</sup> Avenue SW, Calgary Alberta, T2P 1G1, or Alvarez & Marsal at suite 1110, 250 – 6<sup>th</sup> Avenue SW, or such other address of which either party may notify the other from time to time in writing.
18. **Intentionally Omitted.**

19. **Unenforceable Terms.** Any term, condition, or provision of the Listing Agreement that is or will be deemed to be void, prohibited, or unenforceable in any jurisdiction will, as to such jurisdiction, be severable and be ineffective to the extent of such avoidance, prohibition, or unenforceability without in any way invalidating the remaining terms, conditions, and provisions.
20. **Conflict of Laws.** The Listing Agreement will be construed and enforced in accordance with the laws of the Province of Alberta and the laws of Canada applicable and the parties attorn to the courts of the Province of Alberta.
21. **Enurement.** The Listing Agreement will ensure to the benefit of and be binding upon the parties together with their heirs, executors, administrators, successors, and permitted assigns.
22. **Headings.** The headings used in the Listing Agreement are for convenience of reference only and will not be deemed to be a part of the Listing Agreement and will not be referred to in connection with the construction and interpretation of the Listing Agreement.
23. **Severability.** The invalidity or unenforceability of any provision of the Listing Agreement will not affect the validity or enforceability of any other provision. If any provision of the Listing Agreement is illegal, invalid, or void under any applicable law, such provision should be considered severable, remaining provisions will not be impaired and the Listing Agreement will be interpreted as far as possible so as to give effect to its stated purpose.
24. **Time of the Essence.** Time is of the essence of the Listing Agreement and of every part of it.
25. **Counterparts.** The Listing Agreement may be executed in one or more counterparts, each of which will be considered an original but all of which together will constitute one and the same instrument. In addition, facsimile or electronic copies of executed counterparts will be conclusively regarded for all purposes as originally executed counterparts pending the delivery of the originals.
26. **Authority.** We confirm that we have the full power and authority to enter into the Listing Agreement and to lease the Property. We acknowledge having read the Listing Agreement and having received a true copy of it. We further acknowledge to Avison Young that we do not hold an authorization as a real estate broker issued by the Real Estate Council of Alberta.

DATED at the City of Calgary, in the Province of Aberta, this 14th day of November, 2024.

**Alvarez & Marsal Canada Inc.**, in its capacity as court-appointed receiver of Ogen Ltd. and Ogen Holdings Ltd., and not in its personal or corporate capacity

PER:   
NAME: \_\_\_\_\_  
Stephen Oosterbaan

ACCEPTED AND AGREED in the City of Calgary, in the Province of Alberta, this 14 day of November, 2024.

**Avison Young Commercial Real Estate Services, LP**

PER:   
\_\_\_\_\_





## **APPENDIX "B"**

<b>OGEN Holdings Ltd. and OGEN Ltd. - in Receivership</b> <b>Summary of Receiver's Fees and Disbursements</b> <b>January 1, 2024 to September 30, 2024</b> <b>Invoices subject to Court approval</b>						
Inv. No.	Period	Fees	Disbursements	Total Fees & Disbursements	GST	Total
#3	January 1, 2024 to January 31, 2024	129,224.00	799.40	130,023.40	6,501.17	136,524.57
#4	February 1, 2024 to February 29, 2024	98,274.50	2,075.00	100,349.50	5,017.48	105,366.98
#5	March 1, 2024 to March 31, 2024	57,086.50	1,175.76	58,262.26	2,913.11	61,175.37
#6	April 1, 2024 to April 30, 2024	30,164.00	200.00	30,364.00	1,518.20	31,882.20
#7	May 1, 2024 to May 31, 2024	28,955.50	122.22	29,077.72	1,453.89	30,531.61
#8	June 1, 2024 to July 27, 2024	29,254.00	-	29,254.00	1,462.70	30,716.70
#9	July 28, 2024 to August 31, 2024	36,327.00	37.49	36,364.49	1,818.22	38,182.71
#10	September 1, 2024 to September 30, 2024	29,013.00	-	29,013.00	1,450.65	30,463.65
<b>Total</b>		<b>438,298.50</b>	<b>4,409.87</b>	<b>442,708.37</b>	<b>22,135.42</b>	<b>464,843.79</b>

<b>OGEN Holdings Ltd. and OGEN Ltd. - in Receivership</b> <b>Summary of Receiver's Counsel's Fees and Disbursements</b> <b>January 1, 2024 to September 30, 2024</b> <b>Invoices subject to Court approval</b>						
Inv. No.	Period	Fees	Disbursements	Total Fees & Disbursements	GST	Total
#6437515	January 1, 2024 to January 31, 2024	36,294.00	342.38	36,636.38	1,831.82	38,468.20
#6441961	February 1, 2024 to February 29, 2024	48,224.00	583.00	48,807.00	2,439.35	51,246.35
#6451481	March 1, 2024 to March 31, 2024	10,267.50	79.00	10,346.50	513.84	10,860.34
#6456848	April 1, 2024 to April 30, 2024	5,652.50	1.00	5,653.50	282.68	5,936.18
#6469664	May 1, 2024 to May 26, 2024	6,948.50	14.00	6,962.50	348.13	7,310.63
#6473713	May 27, 2024 to June 30, 2024	1,011.50	-	1,011.50	50.58	1,062.08
#6487577	July 22, 2024 to August 20, 2024	2,320.50	-	2,320.50	116.03	2,436.53
#6495073	September 4, 2024 to September 25, 2024	3,689.00	-	3,689.00	184.45	3,873.45
<b>Total</b>		<b>114,407.50</b>	<b>1,019.38</b>	<b>115,426.88</b>	<b>5,766.88</b>	<b>121,193.76</b>